

**GUARANTEED PRICE CONTRACT**

**TRILLIUM HEALTH CENTRE  
MISSISSAUGA SITE (M-SITE)**

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## **AGREEMENT BETWEEN OWNER AND CONTRACTOR**

**This Agreement** made on the 18<sup>th</sup> day of May

in the year 2007

**by and between**

**ELLISDON-LPF TRILLIUM LP**, a limited partnership existing under the laws of the Province of Ontario, by its general partner **EllisDon – LPF (Trillium) GP Inc.**

hereinafter called the “*Owner*”

**and**

**ELLISDON CORPORATION**

hereinafter called the “*Contractor*”

The *Owner* and the *Contractor* agree as follows:

### **ARTICLE A-1        THE WORK**

The *Contractor* shall:

1.1        perform the *Work* required by the *Contract Documents* for

The Trillium Health Centre M-Site West Wing and cardiac services Expansion Project consisting of the expansion of the cardiac program (1 new cardiac operating room and 2 new catheterization suites), renovations to the fracture clinic, diagnostic imaging, emergency support space and mental health. In addition this work includes the construction of a new 7-storey tower that will house Orthopaedics, Cardiac Surgery, Coronary Care, Rehabilitation and Medicine units as well as a Learning Centre and physician support space. In total the scope of new construction is estimated to be 177,494 sq. ft. and for renovations, 62,581 sq. ft; all in accordance with the *Contract Documents*. This description does not in any manner limit the scope of the *Work* as set out in the *Contract Documents*.

located at 100 Queensway, Mississauga, Ontario

which have been signed by the parties, and for which

Perkins Eastman Black / Parkin Architects Limited (in joint venture)

is acting as and is hereinafter called the “*Consultant*” and

1.2        do and fulfill everything indicated by this Agreement and the *Contract Documents*, and

1.3        commence the *Work* by the 18<sup>th</sup> day of May in the year 2007 and

attain the *Phased Occupancy Dates*, the *Interim Completion Date* by the 30<sup>th</sup> day of January, 2009, the *Substantial Performance of the Work* by the 31<sup>st</sup> day of August, 2009 and *Total Completion* by the 7<sup>th</sup> day of October, 2009 in each case subject to adjustment in *Contract Time* as provided for in the *Contract Documents*.

1.4        The *Contractor* shall:

- .1 complete the *Work* in a thorough and expeditious manner, in strict accordance with all the terms and conditions of the *Contract Documents*, and including, without limitation, the standard of care set out in GC 3.16 and the *Construction Schedule*; and
- .2 in the execution, performance and completion of the *Work*, the *Contractor* shall, except as agreed by the *Contractor* and the *Owner*, provide all the labour, *Products*, construction machinery, equipment and services required for the performance and completion of the *Work* and shall carry out, perform, observe, fulfill and abide by all the covenants, agreements, stipulations, provisions and conditions mentioned and contained in the *Contract Documents* on the part of the *Contractor* to be carried out, performed, observed and fulfilled.

## **ARTICLE A-2 AGREEMENTS AND AMENDMENTS**

- 2.1 The *Contract* supersedes all prior negotiations, representations or agreements, either written or oral, relating in any manner to the *Work*, including the *Request for Proposals* but excepting any of the *Contract Documents* listed in Article A-3 of the Agreement- CONTRACT DOCUMENTS and excepting the Project Agreement made between *Project Co*, Trillium Health Centre and the *Contractor* dated the 20<sup>th</sup> day of March, 2007 and the “Implementing Agreements” as referred to therein which agreements shall continue in full force and effect in accordance with their terms.

No modification of the *Contract* shall be effective unless made in writing and signed by both *Owner* and *Contractor* unless otherwise expressly provided.

## **ARTICLE A-3 CONTRACT DOCUMENTS**

- 3.1 The following are the *Contract Documents* referred to in Article A-1 of the Agreement - THE WORK:

- Agreement between the *Owner* and the *Contractor* (the “*Agreement*”)
- Definitions
- The General Conditions of the Guaranteed Price Contract
- The Supplementary Conditions to the Guaranteed Price Contract
- The Limited Assignment of Construction Contract
- *Addenda*

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*16103	BACKBOARDS	1 Only
*16104	NAMEPLATES	1 thru 3
*16109	WIRING METHODS	1 and 2
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*16111	CONDUITS, CONDUIT FASTENINGS	1 thru 4
*16112	SURFACE AND LUMINAIRE RACEWAY	1 and 2
*16114	CABLETRAY	1 and 2
*16115	BUSWAYS	1 thru 3
*16116	WIREWAYS AND AUXILIARY GUTTERS	1 Only
*16122	WIRES AND CABLES UP TO 1000V	1 thru 5
*16131	SPLITTERS, JUNCTION BOXES, PULL BOXES	1 and 2
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*16346	PRIMARY SWITCHGEAR ASSEMBLY	1 thru 7
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*16461	DRY TYPE TRANSFORMERS UP TO 600V PRIMARY	1 thru 4
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*16710	AUDIO VISUAL NURSE CALL SYSTEM	1 thru 15
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*16742	SECURITY RACEWAY SYSTEM	1 Only
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*16880	ISOLATED POWER CENTRES	1 thru 6
*16911	AUTOMATED CONTROLS BY PLC	1 thru 3
*16920	POWER MEASUREMENT AND CONTROL	1 thru 9

#### **ARTICLE A-4      COST OF THE WORK**

4.1      The *Cost of the Work* includes the *Contractor's Design Contingency* as provided for in GC 4.2 – CONTRACTOR'S DESIGN CONTINGENCY and includes the *Contractor's Fee* as provided in paragraph 5.1 of Article A-5 of the Agreement – CONTRACTOR'S FEE and the *Contractor* represents the *Cost of the Work* is included in the *Guaranteed Price*.

#### **ARTICLE A-5      CONTRACTOR'S FEE**

5.1      The *Contractor's Fee* is a fixed fee and is included in the *Cost of the Work*.

## **ARTICLE A-5A FINANCING COST**

5A.1 The *Owner* and the *Contractor* acknowledge that *Project Co* has arranged the *Financing* and that the *Cost of the Financing* is included in the *Guaranteed Price*.

## **ARTICLE A-6 GUARANTEED PRICE**

6.1 The *Guaranteed Price* is \$84,613,695 which excludes *Value Added Taxes*, and is equal to the sum of the *Cost of the Work* and the *Cost of the Financing*. The *Guaranteed Price* will only be adjusted as set out in GC 6.2 – CHANGE ORDER.

6.2 *Guaranteed Price*

The parties agree that the *Guaranteed Price* will not be subject to adjustment despite changes in the *Work*, unless such changes in the *Work* also constitute a *Change in the Scope of the Work* as that term is defined in the *Contract Documents*. The parties further agree that the *Guaranteed Price* will only be adjusted where the *Contract Documents* specifically and expressly refer to an adjustment to the *Guaranteed Price* and no claim for an adjustment to the *Guaranteed Price* on any legal or equitable basis outside of the specific and express rights to an adjustment of the *Guaranteed Price* set out in the *Contract Documents* will be allowed. In order to be effective, any permitted adjustment to the *Guaranteed Price* must be provided for in a *Change Order* under GC 6.2 – CHANGE ORDER.

## **ARTICLE A-7 PAYMENT**

7.1 Subject to the provisions of the *Contract Documents* and paragraph 6.2 of Article A - 6 of the Agreement – GUARANTEED PRICE and to the provisions of GC 5.3 – APPLICATIONS FOR PROGRESS PAYMENT and GC 5.4 – PROGRESS PAYMENTS, and in accordance with and subject to legislative requirements respecting holdbacks the *Owner* shall in Canadian funds:

- .1 make *Base Progress Payments* to the *Contractor* on account of the *Guaranteed Price* when due together with such *Value Added Taxes* as may be applicable to such payment;
- .2 upon the issuance by the *Consultant* of a certificate for payment of *Additional Owner Payments* payable, pay to the *Contractor* the unpaid monies of the *Additional Owner Payments* when due together with such *Value Added Taxes* as may be applicable to such payment;
- .3 upon the later of (i) *Substantial Performance of the Work*, and (ii) the second (2<sup>nd</sup>) *Business Day* following the expiration of a period of forty five (45) days after publication of a certificate of substantial performance of the *Contract* in accordance with the *Construction Lien Act* (Ontario), pay to the *Contractor* the unpaid balance of the legislated holdback amount when due together with such *Value Added Taxes* as may be applicable to such payment;
- .4 upon the issuance of the final certificate for payment, pay to the *Contractor* the unpaid monies of the *Guaranteed Price* when due together with such *Value Added Taxes* as may be applicable to such payment; and
- .5 any payments to be made by the *Owner* in accordance with the foregoing shall be subject to any express rights of the *Owner* to withhold payment under the *Contract Documents* including without limitation under GC 5.9 –WITHHOLDING OF PAYMENT.

7.2 In the event of loss or damage occurring where payment becomes due under the property and boiler insurance policies, payments shall be made to the insurance trustee under and in accordance with the Insurance Trust Agreement.

7.3 Interest

- .1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest at the default interest rate provided in Schedule 8.6 to Appendix 8 in the *RFP Submission* on such unpaid amounts shall also become due and payable until payment. Such interest shall be compounded on a monthly basis. The prime rate shall be the lowest rate of interest quoted by the Royal Bank of Canada for prime business loans.
- .2 Interest shall apply at the rate and in the manner prescribed by paragraph 7.3.1 of this Article on the amount of any claim and for which the *Contractor* is thereafter entitled to payment, either pursuant to PART 8 of the General Conditions - DISPUTE RESOLUTION, or otherwise, from the date the amount would have been due and payable under the *Contract*, had it not been in dispute, until the date it is paid.

## **ARTICLE A-8 RECEIPT OF AND ADDRESSES FOR NOTICES**

- 8.1 Notices in writing between the parties or between them and the *Consultant* and the *Lender's Consultant* shall be delivered by hand or by commercial courier or by facsimile to the address set out below and shall be considered to have been received by the addressee on the date of receipt if delivered by hand or by commercial courier or by facsimile provided if the notice is not delivered by 4:00 p.m. on a *Working Day* then the notice will be deemed received on the next *Working Day*, and in the case of a facsimile transmission the facsimile transmission report (maintained by the sender) must indicate the transmission of the notice was successful.

- .1 The *Owner* at

90 Burnhamthorpe Road  
5<sup>th</sup> Floor  
Mississauga, Ontario

Attention: [REDACTED]

Tel: [REDACTED]  
Fax: [REDACTED]

with a copy to the *Owner's Project Manager* at:

Redevelopment Office  
100 Queensway  
Mississauga, ON

Attention: [REDACTED]

Tel: [REDACTED]  
Fax: [REDACTED]

with a copy to *Infrastructure Ontario* at:

777 Bay Street, 6<sup>th</sup> Floor  
Toronto, Ontario, M5G 2C8

Attention: [REDACTED]

Tel: [REDACTED]  
Fax: [REDACTED]

- .2 The *Contractor* at

89 Queensway Avenue West  
Mississauga, Ontario  
L5B 2V2

Attention: [REDACTED]

Tel: [REDACTED]

Fax: [REDACTED]

with a copy to *Project Co* at:

5000 Yonge Street  
Suite 1502  
Toronto, Ontario  
M2N 7E9

Attention: [REDACTED]

Tel: [REDACTED]

Fax: [REDACTED]

.3 The *Lender's Consultant* at

40 Holly Street  
Suite 900  
Toronto, Ontario  
M4S 3C3

Attention: [REDACTED]

Tel: [REDACTED]

Fax: [REDACTED]

Anyone can change its address by providing the other parties with a notice in writing of the change of address in accordance with the terms of this Article A-8.

## **ARTICLE A-9 LANGUAGE OF THE CONTRACT**

- 9.1 When the *Contract Documents* are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English language shall prevail.
- 9.2 This Agreement is drawn in English at the request of the parties hereto. La présente convention est rédigée en anglais à la demande des parties.

## **ARTICLE A-10 SUCCESSION**

- 10.1 The *Contract* shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and permitted assigns.

## **ARTICLE A-11 INTERPRETATION AND OTHER MATTERS**

- 11.1 It is agreed that one of the reasons why the *Contractor* was selected for the *Work* is the *Contractor's* representation and warranty that it will achieve the *Phased Occupancy Dates, Completion of the Interim Work* and *Substantial Performance of the Work* and *Total Completion* by the dates set out in paragraph 1.3 of Article A-1 of the Agreement – THE WORK, and the *Contractor* acknowledges that it has been advised by the *Owner*



that it is critical to the *Owner* that the *Phased Occupancy Dates* be achieved and that *Completion of the Interim Work, Substantial Performance of the Work* and *Total Completion* be achieved by the prescribed dates set out in the said paragraph 1.3 and that time is of the essence of this *Contract*.

- 11.2 The *Contractor* shall be an independent contractor in performing its obligations under the *Contract*. The *Contract* does not create any agency, partnership, joint venture, fiduciary or other relationship of the *Contractor* with the *Owner* other than the relationship of independent contractor.
- 11.3 No inspection, review, comment, approval, verification, confirmation, certification, acknowledgement or audit pursuant to the provisions of the *Contract* by the *Owner*, the *Owner's Project Manager*, the *Consultant* or *Lender's Consultant*, or anyone on their behalf, nor any failure of any of them to do so, shall relieve the *Contractor* from performing or fulfilling any of its obligations under the *Contract* or be construed as an acceptance of the *Work* or any part thereof.
- 11.4 If any provision of the *Contract* is determined to be invalid, illegal or unenforceable in whole or in part, such invalidity, illegality or unenforceability will only apply to such provision or part, as the case may be, and any other part and all other provisions of the *Contract* shall remain in full force and effect. Furthermore, the parties shall endeavour to agree on a provision which reflects insofar as reasonably possible the commercial intentions of the invalid, illegal or unenforceable provision or part.
- 11.5 The provisions of the *Contract* which by their nature are continuing shall survive termination of the *Contract*.
- 11.6 Each party shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of the *Contract*.
- 11.7 The *Contractor* acknowledges that the *Owner* has provided it with the *Site Background Reports* respecting the *Place of the Work* and the conditions for the *Work*. The cost of any *Work* which results from encountering any condition that is described in or properly inferable from the *Site Background Reports* is included in the *Guaranteed Price* and there shall be no extension of *Contract Time*.
- 11.8 Upon the assignment of this *Contract* to the *Hospital*, nothing in this *Contract* shall in any way fetter the right, authority and discretion of the *Owner* as a public hospital under the *Public Hospitals Act* (Ontario) in fulfilling its statutory or other functions under law including under the *Public Hospitals Act* (Ontario), and the *Contractor* understands and agrees that nothing in this *Contract* shall preclude *Owner's* board of directors from performing, discharging or exercising its duties, responsibilities and powers under law including under the *Public Hospitals Act* (Ontario). The *Contractor* further agrees that it shall comply with all written directions issued by or on behalf of *Owner's* board of directors from time to time and the cost, if any, of implementing the written directions and the additional time, if any, required to implement the written directions shall be implemented by way of a *Change Order or Change Directive*, as applicable, as provided in GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 11.9 Upon the assignment of this *Contract* to the *Hospital*, the *Contractor* recognizes and understands that the *Owner* is a public hospital under the *Public Hospitals Act* (Ontario) and is therefore subject to a highly regulated legal and operational environment. The *Contractor* acknowledges that in addition to the use of *Good Industry Practice* the *Contract Documents* including the *Contract Documents* referred to in GC 3.12.5 include instructions as to the manner in which the *Work* is to be performed to minimize disturbance to the *Hospital* including in respect to noise, dust control, access to the *Place of the Work* and the particular requirements in respect to those portions of the *Work* which are to be carried out within the *Hospital* and in respect to those portions of the *Work* where connections are being made to the *Hospital*. The *Contractor* acknowledges that the *Cost of the Work* includes all premium time and overtime that may be required to perform the *Work* in accordance with the *Contract Documents*, the instructions contained in the *Contract Documents* referred to in GC 3.12.5 and *Good Industry Practice*.

11.10 All references to any legislation set out in the *Contract Documents* shall be a reference to such legislation as amended from time to time.

11.11 *Project Co* and the *Contractor* acknowledge that this *Contract* will be assigned to the *Hospital* under the *Limited Assignment of Construction Contract* and that the provisions of this *Contract* which contemplate the *Owner* being a public hospital under the *Public Hospitals Act* (Ontario) are intended to apply to *Hospital* as *Owner* upon such assignment.

In witness whereof the parties hereto have executed this Agreement and by the hands of their duly authorized representatives.

SIGNED AND DELIVERED  
in the presence of:

**ELLISDON-LPF TRILLIUM LP,**  
by its general partner EllisDon – LPF  
(Trillium) GP Inc.

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Name: [REDACTED]

Title: [REDACTED]

**ELLISDON CORPORATION**

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Name: [REDACTED]

Title: [REDACTED]

## DEFINITIONS

The following Definitions shall apply to all *Contract Documents*.

### 1. **Addenda**

*Addenda* means Addenda issued by the *Consultant* as Addenda A001 to A027 and M-A-1 to M-A-18 together with Post Tender Addendum #001 dated May 4, 2007.

### 2. **Additional Owner Payments**

*Additional Owner Payments* means amounts payable to the *Contractor* which are payable pursuant to any *Change Order* or *Change Directive* under which the *Owner* is expressly responsible for an increase to the *Guaranteed Price* which includes without limitation any cost arising out of a *Change in the Scope of the Work* initiated by the *Owner* under GC 6.1 – CHANGES or any payments to be made by the *Owner* pursuant to GC 6.4 – CONCEALED OR UNKNOWN CONDITIONS or any payments to be made by the *Owner* pursuant to GC 6.5 – DELAYS or any other payments to be made by the *Owner*, which, pursuant to the express provisions of the *Contract*, are to be paid as *Additional Owner Payments*.

### 3. **Additional Site Information**

*Additional Site Information* means (i) the *Site Background Reports*; (ii) other information respecting the *Place of the Work* in the *Contract Documents* including infrastructure drawings and other reports, information or plans and (iii) information that would have been readily apparent to the *Contractor* from its inspections of the *Place of the Work* made under the *Request for Proposals* prior to the date of the *RFP Submission*.

### 4. **Agreement**

*Agreement* has the meaning set out in Article A-3 of the Agreement – CONTRACT DOCUMENTS.

### 5. **Approved Mechanical and Electrical Subcontractors**

*Approved Mechanical and Electrical Subcontractors* means a *Mechanical or Electrical Subcontractor* which is on a list of *Approved Mechanical and Electrical Subcontractors* provided by the *Owner* to the *Contractor* in the *Request for Proposals*.

### 6. **As-Built Drawings, As-Builts**

*As Built Drawings, As-Builts* means a set of *Contract Documents* marked up by the *Contractor* during construction, to record changes in the *Work* from the design documents and to illustrate actual locations of hidden utilities or concealed elements. When simply referred to as “*As-Builts*”, the term may also be interpreted to mean a set of *Contract Documents* containing the *Contractor’s* annotations.

### 7. **Assignable Subcontract Agreement**

*Assignable Subcontract Agreement* means the agreement referred to in GC 3.8.4.

### 8. **Base Progress Payments**

*Base Progress Payments* means all progress payments to be made under GC 5.4 – PROGRESS PAYMENTS for the period from the commencement of the *Work* to, in the case of the *Interim Work*, the *Interim Completion Date* and with respect to the balance of the *Work*, the *Substantial Performance Date* in respect to the *Guaranteed Price* but not including any progress payment in respect to the *Additional Owner Payments*.

**9. Business Day**

*Business Day* means any day other than a Saturday, Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the City of Toronto, Ontario.

**10. Cash Allowance Disbursement Authorization (CADA)**

A *Cash Allowance Disbursement Authorization* is an authorization to the *Contractor* by the *Owner* to expend monies from cash allowances included in the Guaranteed Price as contemplated under GC 4.1 – CASH ALLOWANCES.

**11. Change Directive**

A *Change Directive* is a written instruction prepared by the *Consultant* and signed by the *Owner* directing a *Change in the Scope of the Work* within the general scope of the *Contract Documents*.

**12. Change in the Scope of the Work or Scope Change**

*Change in the Scope of the Work* or *Scope Change* shall mean any change in the scope of the *Work* from that shown in the *Contract Documents* and relating to the quantity or quality of *Products* or materials, components or equipment to be incorporated into the *Work* or any specified method of installation of materials or equipment into the *Work* but does not constitute a *Contractor's Design Contingency* expenditure. It is agreed that refinements and detailing will be accomplished from time to time with respect to the *Contract Documents*, including the addition of items or materials which may have been omitted from the *Contract Documents* but which are necessary to complete a detail shown, specified or properly inferable therefrom. Such refinements and detailing shall not constitute a *Change in the Scope of the Work* and will not result in any adjustment of the *Guaranteed Price*, but will be treated as a *Contractor's Design Contingency* expenditure in accordance with GC 4.2 – CONTRACTOR'S DESIGN CONTINGENCY. For greater certainty, it is understood and agreed that where the *Contractor* is entitled to any extension of time or compensation for additional costs or expenses pursuant to the express provisions of the *Contract Documents*, the matter giving rise to such extension of time or additional costs or expenses shall be deemed to be a *Change in the Scope of the Work* and shall be processed as a *Change Order* pursuant to GC 6.2 – CHANGE ORDER.

**13. Change Order**

A *Change Order* is a written amendment to the *Contract* prepared in accordance with GC 6.2 – CHANGE ORDER by the *Consultant* and signed by the *Owner* and the *Contractor* stating their agreement upon:

- a *Change in the Scope of the Work*;
- the method of adjustment or the amount of the adjustment in the *Overhead and Profit Fee*, if any;
- the method of adjustment or the amount of the adjustment in the *Guaranteed Price*; and
- the extent of the adjustment in the *Contract Time*, if any.

**14. Claims**

*Claims* has the meaning given to it in GC 9.3.8.

**15. Commissioning**

*Commissioning* shall mean the process of moving a building from a static condition to a dynamic condition; preparing a building, or a system for its intended use; the management of testing, verifying, recording and documenting and the training of the *Owner's* employees regarding the operation of systems within a building to assure specified operations through the range of operating conditions and shall include, for greater certainty but without limitation, the requirement that all active building systems and technologies forming part of the *Work*

perform in accordance with the design intent, manufacturers' performance specifications and the *Contract Documents*.

**16. Commissioning Agent**

*Commissioning Agent* shall mean the person or entity appointed by the *Owner*, if any, to assist with *Commissioning*.

**17. Completion of the Interim Work**

*Completion of the Interim Work* means the completion of the *Interim Work* in accordance with this *Contract* and includes the requirement that: (i) the *Contractor* has performed its obligations in GC5.4A – COMPLETION OF THE INTERIM WORK; (ii) the *Interim Work* is available for occupancy by the *Owner* in accordance with the standards for occupancy set out in the Ontario Building Code and the requirements of local municipal building authorities in the City of Mississauga or is actually being used by the *Owner* for the purpose for which it is intended; and (iii) the preliminary *Commissioning* of the *Interim Work* has been completed in accordance with the *Contract Documents* to the extent required to meet the requirements for occupancy of the *Interim Work* set out in the Ontario Building Code, and the building services required for the *Owner* to carry out its *Commissioning* activities with respect to the *Interim Work* are available in accordance with the specifications, but final *Commissioning* of the *Interim Work* is not required including to the extent any component of the *Commissioning* of the *Interim Work* is delayed due to seasonal requirements or cannot practically be achieved prior to occupancy and use or is delayed as a result of *Owner* caused delay in the procurement of any equipment to be incorporated into the *Interim Work*.

**18. Construction Schedule**

*Construction Schedule* means the detailed computerized schedule prepared by the *Contractor* in accordance with the terms and conditions of the *Contract Documents* as updated from time to time in accordance with GC 3.5 – CONSTRUCTION SCHEDULE.

**19. Consultant**

The *Consultant* is the person or entity identified as such in the Agreement. The *Consultant* is the Architect, the Engineer, or entity licensed to practice in the province or territory of the *Place of the Work*. The term *Consultant* means the *Consultant* or the *Consultant's* authorized representative.

**20. Contemplated Change Notice**

A *Contemplated Change Notice* is a notice from the *Owner* to the *Contractor* describing a contemplated *Change in the Scope of the Work*.

**21. Contract**

The *Contract* is the undertaking by the parties to perform their respective duties, responsibilities, and obligations as prescribed in the *Contract Documents* and for greater certainty includes the *Addenda* but does not include any of the responses to Requests for Information submitted by the *Contractor* pursuant to the *Request for Proposals* all of which are superseded by this *Contract* and the *Addenda*.

**22. Contract Documents**

The *Contract Documents* consist of those documents listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS and amendments agreed upon between the parties in writing.

**23. Contract Time**

The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement - THE WORK from commencement of the *Work* to the *Phased Occupancy Dates*, to the completion of the *Interim Work*, to the *Substantial Performance of the Work* and to *Total Completion*. Time is of the essence for this *Contract*.

**24. Contractor**

The *Contractor* is the person or entity identified as such in the Agreement. The term *Contractor* means the *Contractor* or the *Contractor's* authorized representative as designated to the *Owner* in writing.

**25. Contractor Delay**

*Contractor Delay* means any delay in achieving *Substantial Performance of the Work* or *Total Completion* by the prescribed dates set out in paragraph 1.3 of Article A-1 of the Agreement – THE WORK other than as expressly permitted under GC 6.5 – DELAYS.

**26. Contractor's Design Contingency or CDC**

*Contractor's Design Contingency or CDC* is an amount estimated by the *Contractor* and is included in the *Cost of the Work* to cover all the costs to the *Contractor* to implement an acceptable resolution to any and all *Design Issues* that are properly characterized as *Contractor's Design Contingency* matters as described in GC 4.2 – CONTRACTOR'S DESIGN CONTINGENCY.

**27. Contractor's Fee**

The *Contractor's Fee* is the fee referred to in Article A-5 of the Agreement – CONTRACTOR'S FEE.

**28. Contractor's Preliminary Minor Deficiencies List**

*Contractor's Preliminary Minor Deficiencies List* means the list of any *Minor Deficiencies* identified by the *Contractor* in accordance with GC 5.5.1.

**29. Cost of the Financing**

*Cost of the Financing* means all costs and expenses incurred in connection with the *Financing* pursuant to the indicative financing term sheet included in the *RFP Submission* and the *Lending Agreements* including without limitation all interest, fees, expense reimbursements, prepayment and breakage costs and all other costs and expenses shown in the *Financial Model*. For greater certainty, costs and expenses included in the *Cost of the Financing* shall be calculated in a commercially reasonable manner and in accordance with the *Lender's* standard banking practices and the *Lending Agreements* and without regard to the identity of the party paying such costs and expenses and, with respect to any swap breakage costs or gains, such costs or gains shall be calculated in accordance with standard market practices.

**30. Cost of the Work**

*Cost of the Work* means the cost to the *Contractor* of performing the *Work* and includes the *Contractor's Design Contingency* and the *Contractor's Fee* and includes without limitation all premium time and overtime that may be required to perform the *Work* taking into account the requirements of paragraph 11.9 of Article A-11 of the Agreement – INTERPRETATION AND OTHER MATTERS.

**31. Design Issue**

*Design Issue* means any matter arising under, with respect to or in connection with the *Contract Documents*, and in particular the drawings and specifications, which requires clarification in order to complete the *Work*.

**32. Existing Hospital**

*Existing Hospital* means the existing hospital building of the *Hospital* within parts of which and adjoining which the *Work* will occur.

**33. Financial Model**

*Financial Model* means the Financial Model included as Schedule 5 – Financial Model to the Project Agreement at Financial Close.

**34. Final Reimbursement Payment Date**

*Final Reimbursement Payment Date* means the tenth (10<sup>th</sup>) *Business Day* following the later of the date of delivery by the *Consultant* of a certificate of substantial performance in accordance with the *Construction Lien Act* (Ontario) under GC 5.5.3 and the delivery by the *Consultant* of its report under GC 5.5.4 to the *Owner* confirming that *Substantial Performance of the Work* has been achieved.

**35. Financing**

*Financing* means the financing with the *Lender* that is consistent in all material respects with the *Financial Model* to finance the *Base Progress Payments* until, as applicable, the *Interim Reimbursement Payment Date* and the *Final Reimbursement Payment Date*.

**36. Good Industry Practice**

*Good Industry Practice* means using standards, practices, methods and procedures to a good commercial standard in conformity with applicable laws, statutes, ordinances, building codes, or rules or regulations and, in each case of the foregoing, having regard to the standard of care required under GC 3.16 – STANDARD OF CARE.

**37. Guaranteed Price and Contract Price**

*Guaranteed Price*, which excludes *Value Added Taxes*, is equal to the sum of the *Cost of the Work* (which includes the *Contractor's Design Contingency* and the *Contractor's Fee*) and the *Cost of the Financing*. A reference to *Contract Price* in any of the *Contract Documents* shall be deemed to be a reference to *Guaranteed Price*.

**38. Hazardous Materials**

*Hazardous Materials* has the meaning given to it in GC 9.3.2.1.

**39. Hospital**

*Hospital* means Trillium Health Centre.

**40. Interim Completion Date**

*Interim Completion Date* means the date *Completion of the Interim Work* is achieved.

**41. Interim Minor Deficiencies**

*Interim Minor Deficiencies* means the *Minor Deficiencies* with respect to the *Interim Work*.

**42. Interim Minor Deficiencies List**

*Interim Minor Deficiencies List* means the list of *Minor Deficiencies* prepared by the *Consultant* in accordance with GC 5.4A.2.

**43. Interim Preliminary Minor Deficiencies List**

*Interim Preliminary Minor Deficiencies List* means the list of *Minor Deficiencies* identified by the *Contractor* in accordance with GC 5.4A.1.

**44. Interim Project Deliverables**

*Interim Project Deliverables* has the meaning given to it in GC 5.4A.6.

**45. Interim Reimbursement Payment Date**

*Interim Reimbursement Payment Date* means the tenth (10th) *Business Day* following the date of delivery by the *Consultant* of its report under GC 5.4A.2 to the *Owner* confirming *Completion of the Interim Work*.

**46. Interim Work**

*Interim Work* means the portions of the *Work* as described in the specifications in the *Contract Documents* as Project A the West Wing, Project B Phase 1 Catheterization Suites and CSOR and Project C Phase 4 renovation work.

**47. Implementing Agreements**

*Implementing Agreements* has the meaning given to it in the *Project Agreement*.

**48. Insurance Trust Agreement**

*Insurance Trust Agreement* has the meaning given to it in the *Project Agreement*.

**49. Key Personnel**

*Key Personnel* means the individuals identified in GC 13.2.3.

**50. Lender**

*Lender* means any or all of the persons who provide the *Financing*.

**51. Lender's Consultant**

*Lender's Consultant* means any consultant appointed from time to time by the *Lender* providing *Financing* for the *Work*. Nothing contained in the *Contract Documents* and no action taken by the *Lender's Consultant* in connection with the *Work* or the *Contract Documents* shall constitute direction and/or control by the *Owner* or the *Lender* providing *Financing* for the *Work*.

**52. Lender's Direct Agreement**

*Lender's Direct Agreement* means the *Lender's Direct Agreement* as defined in the *Project Agreement*.

**53. Lending Agreements**

*Lending Agreements* means the agreements with the *Lender* to implement the *Financing*.



**54. Limited Assignment of Construction Contract**

*Limited Assignment of Construction Contract* means the Agreement so-named between *Project Co, Hospital* and *Contractor* respecting the assignment of this *Contract* by *Project Co* to *Hospital*.

**55. Longstop Date**

*Longstop Date* means the date which is one hundred and eighty (180) days from the date for the attainment of *Substantial Performance of the Work* as provided in paragraph 1.3 of Article A-1 of the Agreement – THE WORK.

**56. Make Good or Made Good**

*Make Good* or *Made Good* means repairing, restoring, refurbishing, rehabilitating, or performing filling operation on the *Work* as required under the *Contract Documents* or any existing components disturbed due to the *Work* of this *Contract*, to at least the condition existing at the commencement of the *Work*, in terms of construction integrity, finishes, alignment with existing adjoining surfaces, compatibility of materials, sound attenuation criteria, exfiltration/infiltration requirements, air/vapour barrier and thermal continuity.

**57. Minor Deficiencies**

*Minor Deficiencies* means any defects, deficiencies and items of outstanding *Work* (including in relation to any seasonal *Work*) which would not materially impair the *Owner's* use and enjoyment of the *Work* and includes any damage to the work of the *Owner's* own forces or the work of the *Owner's* other contractors caused by the *Contractor*.

**58. Minor Deficiencies List**

*Minor Deficiencies List* means the list of *Minor Deficiencies* prepared by the *Consultant* in accordance with GC 5.5.2.

**59. Mock-up**

Mock-up means two (2) or more materials, *Products*, or systems specified to be constructed at the *Place of the Work* or off site or at shop as applicable and then constructed on site to encourage a *Contractor* or *Subcontractor* and related *Suppliers* to be aware of the integral interface required to assemble these components or systems; usually constructed to full size.

**60. Overhead and Profit Fee**

The *Overhead and Profit Fee* is the amount stipulated in GC 6.2.4 which excludes the *Value Added Taxes*.

**61. Owner**

The *Owner* is the person or entity identified as such in the Agreement. The term *Owner* means the *Owner* or the *Owner's* authorized agent or representative as designated to the *Contractor* in writing, but does not include the *Consultant*.

**62. Owner's Project Manager**

*Owner's Project Manager* shall mean the project manager either internal to the *Owner* or appointed by the *Owner* to assist the *Owner* in the implementation of the *Project*.

**63. Phased Occupancy Date**

*Phased Occupancy Date* means the date when a phase of the *Work* intended to be occupied by the *Owner* as set out in the *Contract Documents* or as established by the *Contractor* under GC 3.5.1.1 prior to *Substantial Performance* of the *Work* meets the requirements of GC 3.12.3.

**64. Place of the Work**

The *Place of the Work* is the designated site or location of the *Work* identified in Article A-1 of the Agreement - THE WORK.

**65. Product**

*Product* or *Products* means material, machinery, equipment, and fixtures forming the *Work*, but does not include machinery and equipment used to prepare, fabricate, convey, or erect the *Work*, which are referred to as construction machinery and equipment.

**66. Project**

The *Project* means the total construction contemplated by the *Contract Documents* of the *Work*.

**67. Project Agreement**

*Project Agreement* means the agreement so-named between the *Hospital*, the *Contractor* and *Project Co* respecting the delivery of the *Project*.

**68. Project Co**

*Project Co* is the person or entity identified as such in the *Project Agreement*.

**69. Project Deliverables**

*Project Deliverables* has the meaning given to it in GC 5.5.8.

**70. Provide**

*Provide* means to supply, install and put into service.

**71. Record Documents**

*Record Documents* means a collection of construction documents, including shop drawings, *Product* data sheets, reports, operation and maintenance information, as well as a revised set of the *Contract Documents*, recording the actual placement, configuration and nature of the various *Products* used in the construction of the *Work* and shall include record drawings prepared pursuant to GC 3.11.9. *Record Documents* shall include where available environmental consultant's report, pre-start health and safety review reports and shall include in an electronic format system acceptable to *Consultant*, *As-Built Drawings* on diskette or recordable CD, maintenance and operating instructions manual, six (6) sets of prints of record drawings and miscellaneous closeout submittals required by *Contract Documents*.

**72. Release**

*Release* has the meaning given to it in GC 9.3.3.3.

**73. Request for Proposals**

*Request for Proposals* means the *Request for Proposals* issued by the *Hospital* in respect of the *Work*.

**74. RFP Submission**

*RFP Submission* means the submission of Project Co in response to the *Request for Proposals*.

**75. Risk Assessment Guidelines**

*Risk Assessment Guidelines* means the Risk Assessment Guidelines for the *Project* set out in GC 13.6 – RISK ASSESSMENT GUIDELINES.

**76. Schedule Cushion**

The *Schedule Cushion* shall be a schedule contingency added to the last activity on the critical path of the *Construction Schedule* and consisting of thirty (30) days duration. The *Schedule Cushion* shall be included in the *Construction Schedule* and for greater certainty the *Schedule Cushion* shall not extend the *Contract Time*. The *Owner* has ownership of the *Schedule Cushion* and can elect to use it at any time in respect to an *Owner* initiated *Change Order* or upon the occurrence of any event of delay which would otherwise grant to the *Contractor* an extension of *Contract Time* provided any portion of the *Schedule Cushion* which has not been used by the *Owner* prior to the *Substantial Performance Date* will be given to the *Contractor*. For greater certainty such utilization shall not result in any right to a claim for an increase in the *Cost of the Financing*.

**77. Shop Drawing Schedule**

*Shop Drawing Schedule* means the schedule for the submission of shop drawings described in GC 3.11.4.

**78. Site Background Reports**

*Site Background Reports* means those reports, plans, and studies respecting the *Place of the Work* and the conditions for the *Work* referred to in GC 13.4 – SITE BACKGROUND REPORTS.

**79. Sub-Subcontractor**

*Sub-Subcontractor* shall mean a person or entity at any tier of the contracting chain beneath a *Subcontractor* or *Supplier*, who performs a part or parts of the *Work*, or supplies *Products* worked to a special design for the *Work* or who supplies work, services, materials, equipment or labour in any respect of the *Work* or who supplies *Products* not worked to a special design for the *Work*.

**80. Subcontractor**

A *Subcontractor* is a person or entity having a direct contract with the *Contractor* to perform a part or parts of the *Work*, or to supply *Products* worked to a special design for the *Work* or who supplies work, services or labour in any respect of the *Work*.

**81. Substantial Performance Date**

*Substantial Performance Date* means the date *Substantial Performance of the Work* is achieved.

**82. Substantial Performance of the Work**

*Substantial Performance of the Work* means that:

1. the *Contractor* has performed its obligations in GC 5.5;

2. the *Work* is available for occupancy by the *Owner* in accordance with the standards for occupancy set out in the Ontario Building Code and the requirements of local municipal building authorities in the City of Mississauga or is actually being used by the *Owner* for the purpose for which it is intended;
3. the *Commissioning* has been completed in accordance with the *Contract Documents* to the extent required to meet the requirements for occupancy set out in the Ontario Building Code and the building services required for the *Owner* to carry out its *Commissioning* activities are available in accordance with the specifications; and
4. all *Project Deliverables* other than those included as *Minor Deficiencies* in accordance with GC – 5.5.8 have been assigned and provided to the *Owner*.

**83. Supplemental Instruction**

A *Supplemental Instruction* is an instruction including a field or site instruction issued for recording any clarifications or interpretation of the *Contract Documents* or giving direction on field conditions and not involving adjustment in the *Guaranteed Price* or *Contract Time*, in the form of specifications, drawings, schedules, samples, models, or written instructions, consistent with the intent of the *Contract Documents*. It is to be issued by the *Consultant* to supplement the *Contract Documents* as required for the performance of the *Work*.

**84. Supplier**

A *Supplier* is a person or entity having a direct contract with the *Contractor* to supply *Products* not worked to a special design for the *Work*.

**85. Total Completion**

*Total Completion* shall occur when the *Work*, except those items arising from the provisions of GC 12.3 – WARRANTY, has been deemed to have been completed in accordance with the applicable provisions of the *Construction Lien Act* (Ontario) and is so certified by the *Consultant* as determined by the *Consultant* in accordance with this *Contract*, including satisfying the requirements of GC 5.8 – FINAL PAYMENT.

**86. Value Added Taxes**

*Value Added Taxes* means such sum as shall be levied upon the *Guaranteed Price* by the Federal or any Provincial or Territorial Government and is computed as a percentage of *Guaranteed Price* and includes the Goods and Services Tax, the Quebec Sales Tax and any similar tax, the payment or collection of which is by the legislation imposing such tax an obligation of the *Contractor*.

**87. Work**

The *Work* means the total construction and related services required by the *Contract Documents* and for greater certainty does not include the *Financing*.

**88. Working Day**

*Working Day* means a day other than a Saturday, Sunday, or a holiday which is observed by the construction industry in the area of the *Place of the Work*.

## GENERAL CONDITIONS OF THE CONTRACT

### PART 1 GENERAL PROVISIONS

#### GC 1.1 CONTRACT DOCUMENTS

- 1.1.1 The intent of the *Contract Documents* is to include the labour, *Products*, and services necessary for the performance of the *Work* by the *Contractor* in accordance with these documents.
- 1.1.2 Nothing contained in the *Contract Documents* shall create any contractual relationship between:
- .1 the *Owner* and a *Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any of the *Work*.
  - .2 the *Consultant* and the *Contractor*, a *Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any of the *Work*.
- 1.1.3 The *Contract Documents* are complementary, and what is required by any one shall be as binding as if required by all.
- 1.1.4 Words and abbreviations which have well known technical or trade meanings are used in the *Contract Documents* in accordance with such recognized meanings.
- 1.1.5 References in the *Contract Documents* to the singular shall be considered to include the plural as the context requires.
- 1.1.6 The specifications are that portion of the *Contract Documents*, wherever located and whenever issued, consisting of the written requirements and standards for *Products*, systems, workmanship, and the services necessary for the performance of the *Work*.
- 1.1.7 The drawings are the graphic and pictorial portions of the *Contract Documents*, wherever located and whenever issued, showing the design, location, and dimensions of the *Work*, generally including plans, elevations, sections, details, schedules, and diagrams.
- 1.1.8 Neither the organization of the specifications into divisions, sections, and parts nor the arrangement of drawings shall control the *Contractor* in dividing the *Work* among *Subcontractors* and *Suppliers* or in establishing the extent of the *Work* to be performed by a trade.
- 1.1.9 If there is a conflict within *Contract Documents*:
- .1 the order of priority of documents, from highest to lowest, shall be  
Supplementary Conditions,  
the Agreement between the *Owner* and the *Contractor*,  
the Definitions,  
the General Conditions,  
the *Addenda*,  
*Division 1 of the specifications*,  
*Division 2 through 16 of the specifications*,  
*material and finishing schedules*,  
drawings.
  - .2 drawings of larger scale shall govern over those of smaller scale of the same date.
  - .3 dimensions shown on drawings shall govern over dimensions scaled from drawings.

- .4 later dated documents shall govern over earlier documents of the same type.
  - .5 if an item is shown on one document, it shall be deemed to be part of the *Work*.
  - .6 written descriptions and words shall govern over graphic depictions.
- 1.1.10 The *Owner* shall provide the *Contractor*, without charge, ten (10) hard copies of the *Contract Documents* (including the *Addenda*), two (2) of which shall be used for record drawings and one (1) electronic copy in pdf format of the *Contract Documents* (including the *Addenda*) contained on a CD. The *Owner* shall also provide the *Contractor*, without charge, one (1) hard copy of all administrative documents such as *Change Orders*, *Contemplated Change Notices*, *Change Directives*, *Supplemental Instructions* and *Design Contingency Issue* resolution forms. Any additional copies of the *Contract Documents* or part thereof including additional copies of administrative documents, shall be at the expense of the *Contractor*. The *Contractor* shall ensure that all copies of the *Contract Documents* received from the *Owner* shall be kept in a secure location.
- 1.1.11 Specifications, drawings, models, and copies thereof furnished by the *Consultant* are and shall remain the *Consultant's* property, with the exception of the signed *Contract* sets, which shall belong to each party to the *Contract*. All specifications, drawings, and models furnished by the *Consultant* are to be used only with respect to the *Work* and are not to be used on other work. These specifications, drawings, and models are not to be copied or altered in any manner except in accordance with the *Contract Documents* without the written authorization of the *Consultant*.
- 1.1.12 Models furnished by the *Contractor* at the *Owner's* expense are the property of the *Owner*.
- 1.1.13 The *Contract Documents* shall be signed in triplicate by the *Owner* and by the *Contractor*.
- 1.1.14 The *Contractor* shall verify the dimensions shown on the drawings before layout of *Work*. The *Contractor* acknowledges its responsibility for remedying issues falling within the *Contractor's Design Contingency* as set out in GC 4.2 – CONTRACTOR'S DESIGN CONTINGENCY.
- 1.1.15 In the case of any item of the *Work* being specified under the heading of more than one trade section, the *Contractor* shall decide which of these trades is to perform the *Work*.
- 1.1.16 Headings in all *Contract Documents* are inserted for reference convenience only and shall not affect the *Work*, nor the interpretation of the *Contract Documents*.
- 1.1.17 Syntax
- .1 Where the words 'accepted', 'reviewed', 'designated', 'directed', 'inspected', 'instructed', 'permitted', 'required', and 'selected' are used in the *Contract Documents*, they are deemed to be followed by the words 'by the *Consultant*', unless the context provides otherwise.
  - .2 Where the words 'acceptable', 'submit' and 'satisfactory' are used in the *Contract Documents*, they are deemed to be followed by the words 'to the *Consultant*', unless the context provides otherwise.
  - .3 Where the masculine is used in the *Contract Documents*, it shall be read and interpreted as if the feminine or neuter had been used when the context of the statement so requires, and the rest of the sentence, clause, paragraph or item shall be interpreted as if all changes in grammar, gender or terminology thereby rendered necessary had been made.
  - .4 The use of the words "include" or "including", or variations thereof, is not limiting.

- 1.1.18 With reference to GC 1.1.9, the *Consultant* shall decide on issues related to any conflict between documents of equal precedence.

## **GC 1.2 LAW OF THE CONTRACT**

- 1.2.1 The law of the *Place of the Work* shall govern the interpretation of the *Contract*.

## **GC 1.3 RIGHTS AND REMEDIES**

- 1.3.1 Except as expressly provided in the *Contract Documents*, the duties and obligations imposed by the *Contract Documents* and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.
- 1.3.2 No action or failure to act by the *Owner*, the *Consultant*, or the *Contractor* shall constitute a waiver of any right or duty afforded any of them under the *Contract*, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **GC 1.4 ASSIGNMENT**

- 1.4.1 The *Contractor* shall not sell, assign, transfer, charge, mortgage, encumber, dispose of or otherwise alienate all or any part of any interest, whether legal or beneficial, in this *Contract* without the prior written consent of *Owner*, which consent may be unreasonably withheld or delayed.
- 1.4.2 GC 1.4.1 shall not apply to:
- .1 the grant of security or any other interest to *Lender* under any of the *Lending Agreements* or any agreement collateral thereto between the *Lender* and the *Contractor*; or
  - .2 the award of any *Subcontract* or any *Sub-Subcontract* entered into in connection with the *Project*.
- 1.4.3 The *Owner* shall not charge, mortgage or encumber, or, except in accordance with GC 1.4.4 sell, assign, transfer, dispose of or otherwise alienate, all or any part of its interest in this *Contract*.
- 1.4.4 The *Owner* may sell, assign, transfer, dispose of or otherwise alienate all (but not less than all) of its interest in this *Contract* and the *Project Agreement* and the other *Implementing Agreements*:
- .1 to the Province of Ontario;
  - .2 to the Local Health Integration Network (as defined pursuant to the *Local Health System Integration Act* (Ontario));
  - .3 to any public hospital under the *Public Hospitals Act* (Ontario) to whom the Ministry of Health and Long-Term Care, exercising its statutory rights, would be entitled to transfer same;
  - .4 to any successor of the *Hospital*, where such successor arises as a result of a direction or approval under the *Public Hospitals Act* (Ontario) and/or the *Local Health System Integration Act* (Ontario) or a reorganization of the delivery of health services initiated by the Province of Ontario;
  - .5 to any person that is regulated and funded by the Province of Ontario as a healthcare institution and is approved by the Ministry of Health and Long-Term Care as a transferee of same so long as such transferee does not have a materially worse credit or risk profile in the reasonable view of the *Lender*; or

- .6 in circumstances other than those described in GC 1.4.4.1 to .5, inclusive with the prior written consent of *Project Co*, the *Contractor* and the *Lender* not to be unreasonably withheld or delayed so long as such successor does not have a materially worse credit or risk profile in the reasonable view of the Lender,

provided that (A) the person to whom any such sale, assignment, transfer, disposition or other alienation is made has the capacity to assume and perform, and agrees in writing with the *Contractor*, *Project Co* and the *Lender* to assume and perform, all the obligations of the *Owner* hereunder and under the *Project Agreement* (including all other “Implementing Agreements” as referred to therein); and (B) the Ministry of Health and Long Term Care confirms to the assignee or transferee its commitment to fund the assignee or transferee on terms and conditions no less favourable than those set out in the “Funding Letter” (as referred to in the *Project Agreement*) and a copy of such confirmation is provided to *Project Co*, *Contractor* and *Lender*.

- 1.4.5 Upon any sale, assignment, transfer, disposition or other alienation in accordance with GC 1.4.4, the *Owner* shall be released of all of its obligations under the *Contract* to the extent assumed by the assignee or transferee.

## **GC 1.5 PROJECT REQUIREMENTS**

- 1.5.1 The *Contractor* represents, covenants and warrants to the *Owner* that:

- .1 it has experience in the construction of health facilities and other public buildings and it has the necessary expertise and experience required to enable it to perform the services required by the Contract Documents, to review and interpret the *Contract Documents* and to complete the *Work* in accordance with the standard of care set out in GC 3.16 – STANDARD OF CARE;
- .2 the manager or supervisory personnel it assigns to the *Project* are highly experienced;
- .3 it has sufficient staff of qualified and competent personnel to replace its designated supervisors, subject to the *Owner's* approval, in the event of death, incapacity or resignation;
- .4 there are no claims or, to the knowledge of the *Contractor*, there are no pending, threatened or anticipated claims that would have a material adverse affect on the financial ability of the *Contractor* to perform the *Work*;
- .5 it has conducted inspections of the *Place of the Work* under the *Request for Proposals* and an investigation and examination of the *Contract Documents* and any other documents made available to the *Contractor* by the *Hospital* (which include, to the extent made available to the *Contractor* by the *Hospital*, equipment lists, legal description of the *Place of the Work*, copies of any registered and unregistered agreements affecting the *Place of the Work*, results of tests, reports of independent testing agencies and surveys and documents indicating location of utilities and other structures to the extent obtained by the *Owner*, information regarding the critical requirements to maintain the operations of the *Hospital*, hospital protocols and rules and regulations, if any, including the *Site Background Reports* and the *Contract Documents* referred to in GC 3.12.5) so as to ascertain the nature of the location of the *Work* and the *Place of the Work*, the physical conditions of the *Place of the Work*, the interface with the *Existing Hospital* and protocols, rules and regulations, if any, possible delays in commencing the *Work*, conditions relating to the transportation, handling and storage of materials and availability of labour and the character and availability of equipment, materials and facilities needed to perform the *Work* to identify any *Design Issue*. The *Contractor* has delivered to the *Consultant* requests for information in respect of all questions arising out of the foregoing inspections, investigations and examinations and in respect of each *Design Issue* identified. Based on this review, the *Contractor* has established a *Contractor's Design Contingency* adequate in its judgement to fund any change



or delay cost that may arise as the result of any further *Design Issue* that may be identified that may be properly characterized as a *Contractor's Design Contingency* matter.

- .6 during the tender period, it has retained the necessary consultants or has sufficient staff with the appropriate skills to review the *Contract Documents*.
- .7 it has solicited bids from and will award sub-contracts only to the *Approved Mechanical and Electrical Subcontractors*.

## **PART 2 ADMINISTRATION OF THE CONTRACT**

### **GC 2.1 AUTHORITY OF THE CONSULTANT**

- 2.1.1 The *Consultant* will have authority to act on behalf of the *Owner* only to the extent provided in the *Contract Documents*, unless otherwise modified by written agreement as provided in GC 2.1.2.
- 2.1.2 The duties, responsibilities, and limitations of authority of the *Consultant* as set forth in the *Contract Documents* shall be modified or extended only with the written consent of the *Owner*, the *Contractor* and the *Consultant*.
- 2.1.3 If the *Consultant's* employment is terminated, the *Owner* shall immediately appoint or reappoint a *Consultant* whose status shall, upon notification to the *Contractor* of such appointment or reappointment, be that of the former *Consultant*.

### **GC 2.2 ROLE OF THE CONSULTANT**

- 2.2.1 The *Consultant* will provide administration of the *Contract* as described in the *Contract Documents* during construction until issuance of the final certificate for payment, and subject to GC 2.1 – AUTHORITY OF THE CONSULTANT and with the *Owner's* concurrence, from time to time until the completion of any correction of defects as provided in GC 12.3.3 of GC 12.3 – WARRANTY.
- 2.2.2 The *Consultant* will visit the *Place of the Work* at intervals appropriate to the progress of construction to become familiar with the progress and quality of the *Work* and to determine if the *Work* is proceeding in general conformity with the *Contract Documents*.
- 2.2.3 If the *Owner* and the *Consultant* agree, the *Consultant* will provide at the *Place of the Work*, one or more project representatives to assist in carrying out the *Consultant's* responsibilities. The duties, responsibilities, and limitations of authority of such project representatives shall be as set forth in writing to the *Contractor*.
- 2.2.4 The *Consultant* will provide to the *Contractor* a complete set of the construction drawings and specifications under the *Contract Documents* incorporating all *Addenda* issued by the *Consultant* from the date of the *Request for Proposals* to the date of execution of the *Contract* as soon as reasonably practical following such date of execution. The *Consultant* shall review the progress of the *Work* and the general conformance of the *Work* to the requirements of the *Contract Documents*. The *Consultant* shall review the submission of the *Contractor* in respect to *Work* completed for the purposes of a progress payment application by the *Contractor* under GC 5.3 – APPLICATIONS FOR PROGRESS PAYMENT to verify the extent of the completion of the *Work* in accordance with the schedule of values and shall perform the other responsibilities of the *Consultant* under GC 5.4 – PROGRESS PAYMENTS and GC 5.8 – FINAL PAYMENT.
- 2.2.5 The *Consultant* will not be responsible for and will not have control, charge, or supervision of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs required in connection with the *Work* in accordance with the applicable construction safety legislation, other regulations, or general construction practice. The *Consultant* will not be responsible for

the *Contractor's* failure to carry out the *Work* in accordance with the *Contract Documents*. The *Consultant* will not have control over, charge of, or be responsible for the acts or omissions of the *Contractor*, *Subcontractors*, *Suppliers*, or their agents, employees, or any other persons performing portions of the *Work*.

- 2.2.6 The *Consultant* will be, in the first instance, the interpreter of the requirements of the *Contract Documents* and shall make findings as to the performance thereunder by both parties to the *Contract*. Interpretations and findings of the *Consultant* shall be consistent with the intent of the *Contract Documents*. When making any interpretations or findings or performing any other functions, or exercising any right or performing any obligation, under the *Contract Documents* the *Consultant* will act reasonably and in good faith and in accordance with generally accepted professional standards and will not show partiality to either the *Owner* or the *Contractor*. Any dispute between the *Owner* and the *Contractor* as to any decision, determination, direction, interpretation or finding of the *Consultant* or any other action taken by the *Consultant* pursuant to or in connection with the *Contract Documents* shall be resolved in accordance with the provisions of PART 8 – DISPUTE RESOLUTION.
- 2.2.7 Claims, disputes, and other matters in question relating to the performance of the *Work* or the interpretation of the *Contract Documents*, shall be referred initially to the *Consultant* by notice in writing given to the *Consultant* and to the other party for the *Consultant's* interpretation and finding which will be given by notice in writing to the parties within a reasonable time.
- 2.2.8 The *Consultant* will have authority to reject *Work* which does not conform to the requirements of the *Contract Documents*. Whenever the *Consultant* considers it necessary or advisable, the *Consultant* will have authority to require inspection or testing of *Work* in accordance with GC 2.3 – REVIEW AND INSPECTION OF THE WORK, whether or not such *Work* is fabricated, installed, or completed. However, neither the authority of the *Consultant* to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the *Consultant* to the *Contractor*, *Subcontractors*, *Suppliers*, or their agents, employees, or other persons performing any of the *Work*.
- 2.2.9 When a request for information is submitted by the *Contractor* in accordance with GC 3.1.1, the *Consultant* will endeavour to provide a response to the *Contractor* as soon as practical, taking into account the impact of the request for information on the critical path. If the request for information relates to an item on the critical path or is reasonably likely to affect an item on the critical path, the *Consultant* shall respond within five (5) *Working Days* or such longer period of time mutually agreed to by the *Consultant* and the *Contractor*. If the request for information does not relate to an item on the critical path and is not reasonably likely to affect an item on the critical path, the *Contractor* and the *Consultant* shall establish a mutually agreed response time that is consistent with the *Construction Schedule*.
- 2.2.10 The *Consultant* will review and take appropriate action upon such *Contractor's* submittals as shop drawings, *Product* data and samples, as provided in the *Contract Documents*.
- 2.2.11 The *Consultant* will prepare *Change Orders* and *Change Directives* as provided in GC 6.2 – CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.
- 2.2.12 The *Consultant* will conduct reviews of the *Work* to determine the dates of *Completion of the Interim Work* and *Substantial Performance of the Work* as provided in GC 5.4A – COMPLETION OF THE INTERIM WORK and GC 5.5 - SUBSTANTIAL PERFORMANCE OF THE WORK respectively and make determinations as required in respect of the *Commissioning* as contemplated in GC 13.3– COMMISSIONING.
- 2.2.13 All certificates issued by the *Consultant* shall be to the best of the *Consultant's* knowledge, information and belief. By issuing any certificate, the *Consultant* does not guarantee the *Work* is correct or complete.

- 2.2.14 The *Consultant* will receive and review written warranties and related documents required by the *Contract* and provided by the *Contractor* and will forward such warranties and documents to the *Owner* for the *Owner's* acceptance.
- 2.2.15 Without limiting the generality of the responsibilities of the *Consultant* in accordance with this GC 2.2, the *Consultant* shall be responsible for reviewing and making a finding on *Design Issues* and issuing all final documentation in accordance with GC 4.2 – CONTRACTOR'S DESIGN CONTINGENCY.
- 2.2.16 The *Owner* has retained the *Owner's Project Manager* to assist the *Owner* in the overall implementation of the *Project*. The *Owner's Project Manager* shall provide services and interface with the *Contractor* and the *Consultant* in relation to coordination of the *Work* for existing operations, schedule overview and communicating decisions and directions of the *Owner*. The *Owner* may, upon notification to the *Contractor*, appoint a new *Owner's Project Manager* whose status shall be that of the former *Owner's Project Manager*.
- 2.2.17 The *Consultant* shall cooperate with the *Lender's Consultant* on a reasonable basis to facilitate the responsibilities of the *Lender's Consultant*. No activities of the *Lender's Consultant* under the *Contract* shall limit in any manner the role and responsibility of the *Consultant* except as expressly provided for in GC 5.3.3 and GC 5.4.1.
- 2.2.18 When the *Owner*, the *Consultant* or the *Contractor* provides any written notice under this *Contract*, they shall also provide a copy of the notice to each other and to the *Owner's Project Manager*, *Project Co*, the *Lender* and the *Lender's Consultant*.

### **GC 2.3 REVIEW AND INSPECTION OF THE WORK**

- 2.3.1 The *Owner*, the *Owner's Project Manager*, the *Consultant* and the *Lender's Consultant* shall have access to the *Work* at all times during normal business hours. The *Contractor* shall provide sufficient, safe and proper facilities at all times for the review of the *Work* by the *Consultant* and the inspection of the *Work* by authorized agencies. If parts of the *Work* are in preparation at locations other than the *Place of the Work*, the *Owner* and the *Consultant*, the *Owner's Project Manager* and the *Lender's Consultant* shall be given access to such *Work* whenever it is in progress upon reasonable notice and during normal business hours.
- 2.3.2 If *Work* is designated for tests, inspections, or approvals in the *Contract Documents*, or by the *Consultant's* instructions, or the laws or ordinances of the *Place of the Work*, the *Contractor* shall give the *Consultant* reasonable notice of when the *Work* will be ready for review and inspection. The *Contractor* shall arrange for and shall give the *Consultant* reasonable notice of the date and time of inspections by other authorities.
- 2.3.3 The *Contractor* shall furnish promptly to the *Consultant* two (2) copies of certificates and inspection reports relating to the *Work*.
- 2.3.4 If the *Contractor* covers, or permits to be covered, *Work* that has been designated for special tests, inspections, or approvals before such special tests, inspections, or approvals are made, given or completed, the *Contractor* shall, if so directed, uncover such *Work*, have the inspections or tests satisfactorily completed, and *Make Good* covering *Work* at the *Contractor's* expense.
- 2.3.5 The *Consultant* may order any portion or portions of the *Work* to be examined to confirm that such *Work* is in accordance with the requirements of the *Contract Documents*. If the *Work* is not in accordance with the requirements of the *Contract Documents*, the *Contractor* shall correct the *Work* and pay the cost of examination and correction. If the *Work* is in accordance with the requirements of the *Contract Documents*, the *Owner* shall pay the cost of examination and restoration.

- 2.3.6 Where inspection and testing services are specified, the firm employed for such services shall be the firm named and paid by the *Owner*, or named by the *Owner* and paid through a *Cash Allowance Disbursement Authorization* by the *Contractor* and others (unless otherwise indicated) or named and paid by the *Contractor*. Such inspection shall be identified in the *Construction Schedule* and the *Contractor* shall give the *Consultant* timely notice requesting on-site inspection when required.
- 2.3.7 Where standards of performance are specified and the Work does not comply with the specified standard of performance, the deficiency in the *Work* shall be corrected as directed by the *Consultant*. Subsequent testing to ensure that the standard of performance has been attained (including retesting by *Owner*), shall be carried out at the *Contractor's* expense and does not form part of the *Cost of the Work*.

## **GC 2.4 DEFECTIVE WORK**

- 2.4.1 The *Contractor* shall promptly remove from the *Place of the Work* and replace or re-execute defective *Work* that fails to conform to the *Contract Documents* whether or not the defective *Work* has been incorporated in the *Work* and whether or not the defect is the result of poor workmanship, use of defective *Products* or damage through carelessness or other act or omission of the *Contractor*. The correction of defective *Work* shall be at the *Contractor's* expense. The *Contractor* shall rectify, in a manner acceptable to the *Consultant*, all defective *Work* and deficiencies throughout the *Work*, whether or not they are specifically identified by the *Consultant*, and the *Contractor* shall prioritize the correction of any defective *Work* so as not to interfere with, or derogate from, the *Construction Schedule*, provided that the *Contractor* shall prioritize the correction of any defective *Work* that in the sole discretion of the *Owner* is determined to adversely affect the day to day operation of the *Hospital*.
- 2.4.2 The *Contractor* shall *Make Good* promptly other contractors' work destroyed or damaged by such rectifications at the *Contractor's* expense.
- 2.4.3 If in the opinion of the *Consultant* it is not expedient to correct defective *Work* or *Work* not performed as provided in the *Contract Documents*, the *Owner* may deduct from the amount of the *Guaranteed Price* the difference in value between the *Work* as performed and that called for by the *Contract Documents*. If the *Owner* and the *Contractor* do not agree on the difference in value, they shall refer the matter to the *Consultant* for a determination and the determination will be issued as a *Change Order*.

## **PART 3 EXECUTION OF THE WORK**

### **GC 3.1 CONTROL OF THE WORK**

- 3.1.1 The *Contractor* shall have complete control of the *Work* and shall effectively direct and supervise the *Work* so as to ensure conformance with the *Contract Documents* including the phasing or sequencing requirements for the *Work* set out in the *Contract Documents*. During the progress of the *Work* the *Contractor* shall endeavour to submit any request for information to the *Consultant* in a timely manner having regard for the *Construction Schedule* and to identify in the request for information the timeframe within which a *Supplemental Instruction* is needed to ensure there is no impact on the *Construction Schedule* including whether and how the information requested affects the critical path. The *Consultant* shall respond to requests for information in accordance with GC 2.2.9. The *Contractor* shall be solely responsible for construction means, methods, techniques, sequences and procedures and for coordinating the various parts of the *Work* under the *Contract*. The *Contractor* shall perform the *Work* in accordance with *Good Industry Practice* and shall employ only quality materials and good workmanship subject to the specific requirements of the *Contract Documents*. The *Contractor* shall develop and implement noise and dust abatement protocols in accordance with the specifications. The *Contractor* shall develop and implement protocols in accordance with the specifications for the phasing or sequencing of the *Work* as set out in the *Contract Documents* including the coordination of the work of the *Owner's* own forces or other contractors with the *Work*. Without limiting the generality of the foregoing, the *Contractor* is responsible for the intermeshing of the various parts and systems comprising any portions of the *Work* so that no part shall be left in an unfinished or incomplete condition owing to any disagreement between the

various *Subcontractors* or various *Sub - Subcontractors*, or between any of them or between any of them and the *Contractor* as to where the *Work* of one begins and ends with relation to the *Work* of the other.

- 3.1.2 The *Contractor* shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for co-ordinating the various parts of the *Work* under the *Contract* and shall coordinate the *Work* so as not to interfere with, interrupt, obstruct, delay or otherwise affect, the work of others.
- 3.1.3 Prior to commencing procurement and construction activities, the *Contractor* shall verify, at the *Place of the Work*, all measurements and levels necessary for proper and complete fabrication, assembly and installation of the *Work* and shall further carefully compare such field measurements and conditions with the requirements of the *Contract Documents*. Where dimensions are not included or exact locations are not apparent, the *Contractor* shall immediately notify the *Consultant* in writing and obtain written instructions from the *Consultant* before proceeding with any part of the *Work* affected thereby.
- 3.1.4 The *Contractor* acknowledges that the security of the occupants of the *Existing Hospital* and the safety of the patients and employees in the *Existing Hospital* is paramount. If any of the employees of the *Contractor*, *Subcontractor* or *Sub-Subcontractor* is determined by the *Owner* to be a concern for the security of the *Existing Hospital* or for the safety of the patients or employees in the *Existing Hospital*, the *Owner* may require that the *Contractor* replace such employee or restrict access to the *Place of the Work* to that employee and the *Contractor* shall find or cause the *Subcontractor* or *Sub-Subcontractor* to find substitute employees to proceed with the *Work* so as not to jeopardize security or safety or cause delay to the progress of the *Work* contrary to the *Construction Schedule*.
- 3.1.5 In the event of an emergency threatening health, life or property, the *Contractor* shall take such action as may be reasonable and appropriate to save lives and protect persons from injury, and, this being done, to protect and preserve property. The provision of GC 10.2 – LAWS, NOTICES, PERMITS, AND FEES requiring notices to the *Consultant* shall not apply in the event of an actual or apparent emergency or matter of safety.

## **GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS**

- 3.2.1 The *Owner* reserves the right to award separate contracts in connection with work related to the *Project* to other contractors and to perform work related to the *Project* with its own forces. The *Owner* may assign the coordination, scheduling and safety training of the work of the *Owner's* other contractors or the *Owner's* own forces to the *Contractor*.
- 3.2.2 When separate contracts are awarded for work related to the *Project*, or when such work is performed by the *Owner's* own forces, the *Owner* shall:
- .1 cause the *Owner's* other contractors or the *Owner's* own forces to comply with the instructions of the *Contractor* relating to co-ordination and scheduling of the activities and work of such contractors or the *Owner's* own forces with the *Work* of the *Contract*;
  - .2 **[INTENTIONALLY DELETED]**;
  - .3 enter into separate contracts with other contractors under conditions of contract which are compatible with the conditions of the *Contract* and provide for compliance by such other contractors with GC 3.2.3.1 and GC 3.2.3.3 and all directions of the *Contractor* in respect to any matter regarding site safety;
  - .4 ensure that insurance coverage is provided as would be required by a prudent owner similarly situated and co-ordinate such insurance with the insurance coverage of the *Contractor* as it affects the *Work* and in any event such insurance shall provide for liability insurance of not less than **[\$[REDACTED]]**; and

- .5 take all necessary steps to avoid labour disputes or other disputes on the *Project* arising from the work of the *Owner's* other contractors or the *Owner's* own forces.

3.2.3 When separate contracts are awarded for work related to the *Project*, or when work is performed by the *Owner's* own forces related to the *Project*, the *Contractor* shall:

- .1 subject to the performance by the *Owner* of its obligations under GC 3.2.2.1 and GC 3.2.2.3, provide for the co-ordination and scheduling of the activities and work of the *Owner's* other contractors and the *Owner's* own forces with the *Work* of the *Contract*;
- .2 afford the *Owner* and the *Owner's* other contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute their work;
- .3 participate with the *Owner's* other contractors and the *Owner* in reviewing their construction schedules when directed to do so by the *Owner*, the *Owner's Project Manager* and/or the *Consultant*;
- .4 where part of the *Work* is affected by or depends upon, for its proper execution, the work of the *Owner's* other contractors or the *Owner's* own forces, promptly report to the *Consultant* in writing and prior to proceeding with that part of the *Work* any readily apparent deficiencies in such work. Failure by the *Contractor* to so report shall invalidate any claims against the *Owner* by reason of such readily apparent deficiencies; and
- .5 Subject to GC 3.6.1, for the *Owner's* own forces and for other contractors, assume overall responsibility for compliance with all aspects of the applicable Health and Safety legislation of the *Place of the Work*, including all the responsibilities of the 'constructor' under the *Occupational Health and Safety Act (Ontario)* ("OHSA").

3.2.4 The *Contractor* shall not be responsible for any failure in the performance of the work of the *Owner's* other contractors or the *Owner's* own forces. If:

- .1 any of the *Owner's* other contractors or the *Owner's* own forces cause any damage to the *Work*,
- .2 the *Contractor* incurs any additional costs or there is any delay in the *Construction Schedule* as a result of any of the *Owner's* other contractors or the *Owner's* own forces not complying with the co-ordination, scheduling and safety instructions of the *Contractor*; or
- .3 the *Contractor* incurs any additional costs or there is any delay in the *Construction Schedule* as a result of any work done by the *Owner's* other contractors or the *Owner's* own forces (other than work that is described in the *Contract Documents* and performed by such other contractors or the *Owner's* own forces in accordance with *Good Industry Practice* and in accordance with the terms of their respective contracts or engagements with the *Owner*);

the *Contractor* shall be entitled to compensation in respect of such damage or for such increased costs and to an extension of time for such delay, in each case authorized and valued as a *Change Order*.

3.2.5 Claims, disputes, and other matters in question between the *Contractor* and the *Owner's* other contractors shall be dealt with in substantially the same manner as contemplated in PART 8 – DISPUTE RESOLUTION provided the *Owner's* other contractors have reciprocal obligations. The *Contractor* shall be deemed to have consented to arbitration of any dispute with any other contractor of the *Owner* whose contract with the *Owner* contains a similar agreement to arbitrate.

3.2.6 Placing, installing, application and connection of work performed by the *Owner's* own forces or by the *Owner's* other contractors, on and to the *Work* performed by the *Contractor* will not relieve the

*Contractor's* responsibility to provide and maintain the specified warranties with respect to the *Work* except to the extent that the placing, installing, application or connection of such work by the *Owner's* own forces or by the *Owner's* other contractors on and to the *Work* performed by the *Contractor* gives rise to a claim under the warranties provided by the *Contractor*, in which case such warranties shall not apply to such claim.

### **GC 3.3 TEMPORARY SUPPORTS, STRUCTURES AND FACILITIES**

- 3.3.1 The *Contractor* shall have the sole responsibility for the design, erection, operation, maintenance, and removal of temporary supports, structures, and facilities and the design and execution of construction methods required in their use. Any review of the *Contractor's* temporary supports, structures, or facilities or any shop drawings related thereto by the *Owner* or the *Consultant* does not absolve the *Contractor* of its "sole responsibility" under this section.
- 3.3.2 The *Contractor* shall engage registered professional engineering personnel skilled in the appropriate disciplines to perform those functions referred to in GC 3.3.1 where required by law or by the *Contract Documents* and in all cases where such temporary supports, structures, and facilities and their method of construction are of such a nature that professional engineering skill is required to produce safe and satisfactory results.
- 3.3.3 Notwithstanding the provisions of GC 3.1 – CONTROL OF THE WORK, GC 3.3.1 and GC 3.3.2 or provisions to the contrary elsewhere in the *Contract Documents* where such *Contract Documents* include designs for temporary supports, structures and facilities or specify a method of construction in whole or in part, such facilities and methods shall be considered to be part of the design of the *Work* and the *Contractor* shall not be held responsible for that part of the design or the specified method of construction. The *Contractor* shall, however, be responsible for the execution of such design or specified method of construction in the same manner as for the execution of the *Work*.

### **GC 3.4 DOCUMENT REVIEW**

- 3.4.1 The *Contractor* acknowledges having conducted a thorough review of the *Contract Documents* and has reported to the *Consultant* and the *Owner* any *Design Issue* found by the *Contractor* in the *Contract Documents* during its review. If the *Contractor* does discover any *Design Issue* in the *Contract Documents*, the *Contractor* shall not proceed with the *Work* affected until the *Contractor* has proceeded in accordance with Section GC 4.2 – CONTRACTOR'S DESIGN CONTINGENCY. The *Contractor* acknowledges that it is responsible for those risks assumed by the *Contractor* described in Section GC 4.2 – CONTRACTOR'S DESIGN CONTINGENCY and that any additional costs resulting from such risks will form part of the *Contractor's Design Contingency*.

### **GC 3.5 CONSTRUCTION SCHEDULE**

- 3.5.1 The *Contractor* shall:
- .1 review the proposed schedules and deadlines of the *Owner* for each phase of the *Work* and where the *Owner* has not specified particular dates for occupancy of phases of the *Work* the *Contractor* shall set these dates so as to achieve occupancy of such phases of the *Work* on an as early as reasonably achievable basis and include them in its proposed *Construction Schedule* under GC 3.5.1.2;
  - .2 prepare and submit to the *Owner* and the *Consultant* as soon as practical and in any event within forty-five (45) days of execution and delivery of the *Agreement* a detailed computerized *Construction Schedule* using a critical path method ("CPM") network and a *Construction Schedule* dependent cash flow forecast both in a form approved by the *Owner*. The planning and schedule software shall be "Primavera Project Planner" with the most current release available to be used. The *Construction Schedule* and any other schedule related reporting requirements of the

*Contractor* shall conform to the phasing and sequencing requirements for the *Work* as set out in the *Contract Documents* including the work to be completed by the *Owner's* own forces or by other contractors and the *Phased Occupancy Dates*, the date for *Completion of the Interim Work*, the date for *Substantial Performance of the Work*, the date for *Total Completion* and the specifications included in Division 1 of the *Contract Documents*, including, but not limited to, the sequencing requirements. The *Construction Schedule* shall indicate the requirements of GC 4.1.5.4, the schedule for *Commissioning of the Work*, the *Phased Occupancy Dates* and the dates set out in paragraph 1.3 of Article A-1 of the Agreement – THE WORK for achievement of the *Completion of the Interim Work*, *Substantial Performance of the Work* and *Total Completion* within the *Contract Time*. The *Owner* and the *Consultant* will respond to the *Contractor*, in writing, within ten (10) *Working Days* of receipt of the *Construction Schedule*, with either its approval or its detailed comments;

- .3 in the event that the *Owner* and the *Consultant* do not approve the *Contractor's* initial *Construction Schedule* submission, the *Contractor* shall re-submit as many times as necessary the *Construction Schedule*, revised in accordance with the *Owner's* and the *Consultant's* detailed comments and each re-submission shall be provided within five (5) *Working Days* of receipt of the *Consultant's* and the *Owner's* detailed comments who in turn shall also respond within five (5) *Working Days*. When the *Construction Schedule* pursuant to GC 3.5.1.2 has been approved by the *Owner* and the *Consultant*, it shall be the baseline *Construction Schedule* against which the *Contractor* shall monitor progress of the *Work*;
- .4 advise the *Consultant* promptly of any error or omission in the *Construction Schedule* and correct such error or omission;
- .5 continuously monitor the progress of the *Work* in relation to the *Construction Schedule* and the cash flow and update the *Construction Schedule* and the cash flow forecast with the monthly construction status report under GC 5.2.5. The continuity of the *Construction Schedule's* CPM network shall be maintained for all updates and revisions. The *Contractor* shall immediately notify the *Owner* of any variance or potential variance in the scheduled completion dates;
- .6 advise the *Consultant* of any revisions required to the *Construction Schedule* as a result of extension of the *Contract Time* in accordance with PART 6 – CHANGES IN THE SCOPE OF THE WORK;
- .7 identify potential variances between scheduling and scheduled completion dates, review the schedule of *Work* not started or incomplete and implement necessary adjustments in the *Construction Schedule* in order to meet the *Phased Occupancy Dates*, the date for *Completion of the Interim Work*, the date for *Substantial Performance of the Work* and the date for *Total Completion* set out in the *Construction Schedule* including the movement of manpower and equipment in response to availability of work areas;
- .8 respect the *Construction Schedule* so as not to interfere with the other activities of the *Owner* in the *Existing Hospital*;
- .9 monitor the *Subcontractors'* personnel staffing and equipment and the availability of materials and supplies in order to meet the *Construction Schedule* and take appropriate courses of action when requirements of a contract with any *Subcontractor*, *Supplier* or *Sub-Subcontractor* are not met;
- .10 obtain from *Subcontractors* and *Suppliers* a schedule showing the order number, vendor's name, shop drawing status, manufacturing lead time and delivery date of all critical material and equipment required for the *Work*;



- .11 pre-order equipment, materials and supplies where necessitated by cost and/or time factors and expedite delivery of critical items; and
- .12 in consultation with the *Owner's Project Manager* and the *Consultant*, include in the *Construction Schedule* the integration of the equipment specifications, rough-in requirements, supply and installation, including *Owner's* equipment, to ensure the ordering, delivery, receiving and supply of equipment does not impact on the *Construction Schedule*.

3.5.2 Any changes to the critical path of the *Construction Schedule* initiated by the *Contractor* which affect the *Phased Occupancy Dates*, the date for *Completion of the Interim Work*, the date for *Substantial Performance of the Work* and the date for *Total Completion* must be approved in writing by the *Owner*. Subject to the terms of PART 6 - CHANGES IN THE SCOPE OF THE WORK, any *Owner* approval of such changes to the critical path does not entitle the *Contractor* to a *Change Order*, to extend the *Contract Time* or add to the *Guaranteed Price*.

3.5.3 If the *Contractor* is not meeting the deadlines set out in the *Construction Schedule* consistent with its obligations under the *Contract*, then at the written request of the *Owner* or the *Consultant*, the *Contractor*, and its *Subcontractors*, *Suppliers* and *Sub-Subcontractors* as required, shall promptly increase efforts on the *Project* including the addition of more personnel to the *Project* during regular times and during periods of time for which overtime may be required, and, if the delay is for any reason other than as described in GC 6.5.2, GC 6.5.3, GC 6.5.4 or GC 6.5.7, all expenses and costs incurred as a result shall be borne by the *Contractor*. Any dispute between the parties as to whether the *Contractor* is meeting the deadlines set out in the *Construction Schedule* shall be resolved in accordance with PART 8 – DISPUTE RESOLUTION.

### **GC 3.6 CONSTRUCTION SAFETY**

3.6.1 The *Contractor* shall perform all of the obligations of the 'constructor', within the meaning of the OHSA, and shall be solely responsible for construction safety at the *Place of the Work* and for compliance with the rules, regulations and practices required by the OHSA. The *Owner* will contractually require other contractors retained by the *Owner* and the *Owner's* own forces to comply with the *Contractor's* safety program and safety instructions, and the *Contractor*, as constructor, will have the right to remove the other contractors retained by the *Owner* and the *Owner's* own forces from the *Place of the Work* should they not comply with the *Contractor's* safety programs and safety instructions. Without limiting the *Contractor's* obligation pursuant to this paragraph, the *Contractor* shall ensure that all *Subcontractors'*, *Suppliers'* and *Sub-Subcontractors' Work* is in accordance with the OHSA. The *Owner* shall have the right to assign to the *Contractor* the work of the other contractors retained by the *Owner* or the work of the *Owner's* own forces solely for the purpose of coordination of such work and safety training and safety compliance for all persons engaged in such work and, if such coordination, safety training and safety compliance results in a material increase in the *Contractor's* cost, the *Contractor* shall be compensated for such coordination, safety training and safety compliance in accordance with the provisions of PART 6 – CHANGES IN THE SCOPE OF THE WORK.

3.6.2 Prior to commencement of the *Work*, the *Contractor* shall submit to the *Owner*:

- .1 Documentation of a valid Workplace Safety and Insurance Board clearance certificate and confirmation of the *Contractor's* WSIB CAD-7 performance rating.
- .2 Documentation of the *Contractor's* insurance coverage.
- .3 Documentation of the *Contractor's* in-house safety-related programs.
- .4 A copy of the Notice of Project filed with the Ministry of Labour.

- 3.6.3 The *Contractor* hereby represents and warrants to the *Owner* that appropriate health and safety instruction and training have been provided to the *Contractor's* employees, *Subcontractors*, *Sub-Subcontractors* and *Suppliers* (to the extent same shall have access to the *Project* site) before the *Work* is commenced including training regarding the infection control procedures set out in the materials referred to in GC 3.12.5 and agrees to provide to the *Owner*, if requested, proof of such instruction and training.
- 3.6.4 The *Contractor* shall tour the appropriate area to familiarize itself with the *Place of the Work* prior to commencement of the *Work*.
- 3.6.5 The *Contractor* shall perform the *Work* in accordance with its corporate safety-related programs, the requirements of GC 3.12.5 and applicable legislation, regulations and guidelines (to the extent such guidelines have the force of law). The *Contractor* shall have a competent supervisor on site as required under OHSA at all times.
- 3.6.6 The *Contractor* shall indemnify and save harmless the *Owner*, the *Consultant*, the *Owner's Project Manager* and the Ontario Infrastructure Projects Corporation, together with their agents, officers, directors, employees, consultants, successors and assigns as well as her Majesty the Queen in right of Ontario, her ministers, agents and employees or any person for whom they are in law responsible, from and against any and all claims arising out of any safety infractions committed by the *Contractor*, a *Subcontractor*, a *Sub-Subcontractor* or a *Supplier* under the OHSA and regulations thereto or resulting from any failure by the *Contractor* to fulfill its obligations under this GC 3.6 – CONSTRUCTION SAFETY including, without limitation, the failure to exercise any of the rights or powers given to the *Contractor* under GC 3.6.1 at the *Place of the Work* in respect of any *Person* for whom *Contractor* is responsible under the OHSA in connection with the *Project*, (including the payment of all legal fees on a full indemnity basis), save and except for claims arising out of any wilful misconduct or negligence of any of the said indemnified persons or breach of the terms of the *Contract* by the *Owner*, or failure of any of the *Owner's* other contractors or the *Owner's* own forces to comply with any instructions or directions given by the *Contractor*.

### **GC 3.7 SUPERVISOR**

- 3.7.1 The *Contractor* shall employ competent supervisors and necessary assistants who shall be in attendance at the *Place of the Work* while *Work* is being performed and shall specifically include a competent mechanical and electrical coordinator and equipment coordinator. The *Contractor* acknowledges that the supervisors are *Key Personnel* in accordance with GC 13.2 – KEY PERSONNEL. The *Contractor's* supervisors shall, subject to the provisions of GC 13.2 – KEY PERSONNEL, devote their full time during working hours to the *Project* and remain at the *Place of the Work* until the *Substantial Performance of the Work* is achieved and thereafter such supervisors shall, subject to the provisions of GC 13.2 – KEY PERSONNEL, devote sufficient time and effort to the *Project* as necessary until the final certificate of payment has been issued by the *Consultant* and all *Minor Deficiencies* have been rectified. The *Contractor* shall include in its staff separate qualified mechanical and electrical coordinators who shall be responsible for coordinating the general, mechanical and electrical shop drawings submitted by the *Subcontractors* and *Suppliers* for various trades or divisions of the *Work*; checking for any conflicts or interferences of the *Work* of one division or trade with another; checking for completeness of the shop drawings; provide direction on any changes that may be required for compliance with the *Contract Documents* for submission to the *Consultant* and review of shop drawings. The mechanical and electrical coordinators shall be active participants in the *Commissioning* and work closely with the *Commissioning Agents* in accordance with GC 13.3 – COMMISSIONING. The mechanical and electrical coordinators shall be *Key Personnel* in accordance with GC 13.2 – KEY PERSONNEL.
- 3.7.2 The supervisor and project manager appointed by the *Contractor* and identified in GC 13.2.3, shall represent the *Contractor* at the *Place of the Work* and shall have full authority to act on written instructions given by the *Consultant* and/or the *Owner* and the *Owner's Project Manager*. Instructions given to the supervisor or the project manager shall be deemed to have been given to the *Contractor* and

both the supervisor and any project manager shall have full authority to act on behalf of the *Contractor* and bind the *Contractor* in matters related to this *Contract*.

### **GC 3.8 SUBCONTRACTORS AND SUPPLIERS**

- 3.8.1 The *Contractor* shall preserve and protect the rights of the parties under the *Contract* with respect to *Work* to be performed under subcontract, and shall:
- .1 enter into contracts or written agreements with *Subcontractors* and *Suppliers* to require them to perform their *Work* as provided in the *Contract Documents* and without limiting the generality of the foregoing, shall advise the *Subcontractors* and *Suppliers* of the transfer to the *Contractor* of the design coordination and design errors and omissions and design completion risk as set out in GC 4.2 – CONTRACTOR’S DESIGN CONTINGENCY;
  - .2 incorporate the relevant terms and conditions of the *Contract Documents* into all contracts or written agreements with *Subcontractors* and *Suppliers* including those specified in GC 12.3 – WARRANTY; and
  - .3 be as fully responsible to the *Owner* for acts and omissions of *Subcontractors*, *Suppliers* and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Contractor*.
- 3.8.2 A list of all *Subcontractors* and *Suppliers* that the *Contractor* proposes to engage for the performance of the *Work* as of the date of execution of this *Contract* is set forth in GC 13.8.1, and the *Contractor* agrees to update such list from time to time as additional *Subcontractors* and *Suppliers* are engaged. Any of these named *Subcontractors* and *Suppliers* listed by the *Contractor* cannot be changed without the prior written approval of the *Consultant*. Where the *Contractor* wishes to change such *Subcontractors* or *Suppliers*, it shall set out in writing to the *Consultant* sufficient reasons for the desired change. If the *Consultant* is not satisfied with the *Contractor’s* reason for wanting to change a *Subcontractor* or *Supplier*, it shall notify the *Contractor* that its request is not acceptable and that the *Contractor* is required to proceed with the designated *Subcontractor* or *Supplier*. The *Contractor* shall indemnify and save harmless the *Owner* from and against any claims by any *Subcontractors* and *Suppliers* that the *Contractor* has changed which may arise out of or be in connection with such change.
- 3.8.3 The *Contractor* shall not be required to employ as a *Subcontractor* or *Supplier*, a person or firm to whom the *Contractor* may reasonably object provided the *Owner* may require the *Contractor* to use particular *Subcontractors* or *Suppliers* as specified in the *Contract Documents* for specific building systems of the *Owner* to ensure the *Owner* does not lose the benefit of any warranty in respect to such building systems including without limitation building automation, fire alarm and nurse call. The *Owner* shall have the right to assign to the *Contractor* the work of the *Owner’s* other contractors or the work of the *Owner’s* own forces related to the *Project* and if such assignment results in an increase in the *Contractor’s* cost or a delay in the *Construction Schedule*, the *Contractor* shall be entitled to an extension of time and/or reimbursement by the *Owner* for the increase to the *Contractor’s* cost, as the case may be, processed as a *Change Order* in accordance with the *Change Order* procedure pursuant to GC 6.2 – CHANGE ORDER. Notwithstanding the foregoing provisions of this GC 3.8.3 the *Contractor* shall use the *Subcontractors* or *Suppliers* that have been identified in the *Contract Documents* for specific portions of the *Work* and in respect to such *Subcontractors* or *Suppliers* there shall be no increase in the *Contractor’s* cost or allowance for any delay in the *Construction Schedule*.
- 3.8.4 The *Contractor* hereby agrees to contractually obligate each of its *Subcontractors* and *Suppliers*, including suppliers leasing any construction machinery and equipment, to enter into an agreement (the “Assignable Subcontract Agreement”) in the form as set out in GC 13.5 – ASSIGNABLE SUBCONTRACT AGREEMENT hereto to evidence that each such subcontract shall be assignable without the *Subcontractor’s* or *Supplier’s* further consent and without the payment of any penalty or other amount at the *Owner’s* or the *Lender’s* option, to the *Owner* or to the *Lender* or to such other contractor

as the *Owner* or *Lender* may designate, which rights shall only be exercised by the *Owner* or the *Lender* in the event that the *Contract* is terminated.

### **GC 3.9 LABOUR AND PRODUCTS**

- 3.9.1 Unless otherwise stipulated elsewhere in the *Contract Documents* or in other documents made available to the *Contractor* by the *Owner*, the *Contractor* shall provide and pay for labour, *Products*, tools, construction machinery and equipment, water, heat, light, power, transportation and other facilities and services necessary for the performance of the *Work* in accordance with the *Contract* and shall, as appropriate, provide separate metering for such services. The *Contractor* shall arrange for delivery for materials and equipment to the *Project* in accordance with the *Construction Schedule*.
- 3.9.2 *Products* provided shall be new. All work will be new, of good quality, and free from faults, improper workmanship and defects and in conformance with the *Contract Documents*. *Products* which are not specified shall be of a quality best suited to the purpose required and their use subject to the approval of the *Consultant*.
- 3.9.3 The *Contractor* shall maintain good order and discipline among all personnel engaged on the *Work* and shall promote and maintain a good relationship with all personnel engaged on the *Work*, shall not employ any persons to perform the *Work* whose labour affiliation, or lack thereof is incompatible with other labour employed by the *Contractor* in connection with the *Work*, comply with all applicable trade union agreements and act promptly on all problems of labour relations including grievances, jurisdictional disputes, and interpretations of any applicable trade union agreements. The *Contractor* shall not employ on the *Work* anyone not skilled in the task assigned to him and shall adopt and enforce regulations with respect to safety, fire prevention, smoking, the use of alcoholic beverages, illegal drugs and other controlled substances and other activities that will or may constitute a danger to life, health or property.
- 3.9.4 At the *Owner's* instruction, the *Contractor* shall promptly remove from the *Place of the Work* any employee who represents a threat to the safety or progress of the *Project* or persons on the *Project* or whose conduct may be considered as harassment in the workplace of any person who is an employee of the *Owner* under the *Human Rights Code* (Ontario).
- 3.9.5 The *Contractor* is responsible for the safe on-site storage of *Products* and their protection (including *Products* supplied by the *Owner* and other contractors) in such ways as to avoid dangerous conditions or contamination to the *Products* or other persons or property and in locations at the *Place of the Work* to the satisfaction of the *Consultant*.
- 3.9.6 Title to the *Products* shall pass to the *Owner* upon payment therefor or upon incorporation into the *Project*, whichever occurs first. For greater certainty, title to *Products* delivered, but not installed, shall pass to the *Owner* when paid for. The *Contractor* shall promptly execute and deliver to the *Owner*, from time to time as the *Owner* may require, any further documentation required to identify, evidence, perfect or protect the *Owner's* interest in the *Products* including without limitation, any registrations pursuant to the *Personal Property Security Act* (Ontario). Notwithstanding the foregoing, the *Contractor* shall continue to bear the risk of loss or damage with respect to each phase of the *Work* until the relevant *Phased Occupancy Date* in respect of that phase, with respect to the *Interim Work* until the *Interim Completion Date*, and with respect to the balance of the *Work* until the *Substantial Performance Date*.

### **GC 3.10 DOCUMENTS AT THE SITE**

- 3.10.1 The *Contractor* shall keep one copy of the current digital files maintained at all times of *Contract Documents*, *Construction Schedule*, submittals, reports, *Supplementary Instructions*, *Change Orders*, *Contemplated Change Notices*, *Change Directives*, *Contractor's Design Contingency* issue resolution documents, partnering documents, records of meetings and all other documents necessary for the administration of the *Project* at the *Place of the Work*, all in good order and available to the *Owner*, the

*Lender's Consultant* and the *Consultant*. The Contractor shall keep a daily log available to the *Owner*, the *Lender's Consultant* and the *Consultant* at all times.

- 3.10.2 The *Contractor* shall where practical, keep one copy of current standards and manufacturers' literature specified in the *Contract Documents* at the *Place of the Work* in good order and available to the *Consultant* and the *Lender's Consultant* and their respective representatives for the duration of the *Work*.

### **GC 3.11 SHOP DRAWINGS**

- 3.11.1 Shop drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, samples, *Product* data, and other data which the *Contractor* provides to illustrate details of a portion of the *Work*.

- 3.11.2 The *Contractor* shall provide shop drawings as described in the *Contract Documents* or as the *Consultant* may reasonably request.

- 3.11.3 The *Contractor* shall review all shop drawings prior to submission to the *Consultant*. The *Contractor* represents by this review that:

- .1 the *Contractor* has determined and verified all field measurements, field construction conditions and *Product* requirements, or will do so and
- .2 the *Contractor* has checked and co-ordinated each shop drawing with the requirements of the *Work* and of the *Contract Documents*.

The *Contractor* shall confirm this review of each shop drawing by stamp, date and signature of the person responsible. At the time of submission the *Contractor* shall notify the *Consultant* in writing of any deviations in the shop drawings from the requirements of the *Contract Documents*.

- 3.11.4 At the commencement of the *Work* the *Contractor* shall prepare, for the review and acceptance of the *Consultant* a schedule (the "*Shop Drawing Schedule*") of the dates for submission and return of shop drawings to ensure there is no impact on the *Construction Schedule* including on a reasonable basis in respect to the work of the *Owner's* own forces or the *Owner's* other contractors as set out in the *Contract Documents* or as the *Owner* has otherwise advised the *Contractor*. The *Consultant* will have a minimum of ten (10) *Working Days* to review and return shop drawings in accordance with the *Shop Drawing Schedule*. The *Contractor* shall submit shop drawings to the *Consultant* in accordance with the *Shop Drawing Schedule* and in an orderly sequence, sufficiently in advance so as to allow for the *Consultant's* proper review and cause no delay to the *Work* or in the work of the *Owner's* own forces or the *Owner's* other contractors which has been incorporated into the *Construction Schedule*. If, at any time, the *Contractor* submits an unusually large number of shop drawings not contemplated by the *Shop Drawing Schedule*, such that the *Consultant* cannot process these drawings within ten (10) *Working Days*, the *Consultant*, within three (3) *Working Days* of receipt of such shop drawings, will provide the *Contractor* with an estimate of the time necessary for processing. The *Contractor* shall periodically re-submit the *Shop Drawings Schedule* to correspond to changes in the *Construction Schedule* for the review and acceptance of the *Consultant*. The schedule for re-submissions shall provide for a minimum five (5) *Working Days* period for the *Consultant's* review. Shop drawings which require approval of a legally constituted authority having jurisdiction shall be submitted first to the *Consultant* for its approval in accordance with the approval process set out in this GC 3.11.4 prior to submission by the *Contractor* to such authority. Should the *Consultant's* review of the shop drawings require significant changes to the shop drawings, then the *Contractor* shall revise same and resubmit to the *Consultant*, prior to submitting to the authority having jurisdiction.

- 3.11.5 The *Contractor* shall submit shop drawings in the form specified or as the *Consultant* may direct. The *Consultant* will review and return shop drawings in accordance with the *Shop Drawing Schedule* referred to in and the other provisions of GC 3.11.4. The *Consultant's* review is for conformity to the design concept and for general arrangement only. The *Consultant's* review shall not relieve the *Contractor* of

responsibility for errors or omissions in the shop drawings or for meeting all requirements of the *Contract Documents*.

- 3.11.6 Upon the *Consultant's* request, the *Contractor* shall revise and resubmit shop drawings which the *Consultant* rejects as inconsistent with the *Contract Documents* unless otherwise directed by the *Consultant*. The *Contractor* shall notify the *Consultant* in writing of any revisions to the re-submission other than those requested by the *Consultant*.
- 3.11.7 Only shop drawings indicated as 'Reviewed' or 'Reviewed as Noted' and bearing the *Consultant's* review date and initials, shall be used at the *Place of the Work* or for the manufacture or fabrication of *Products*.
- 3.11.8 The review of shop drawings by the *Consultant* does not authorize a change in the *Guaranteed Price* or *Contract Time*.
- 3.11.9 The *Contractor* shall prepare and maintain record drawings which shall consist of the shop drawings and specifications revised by the *Contractor* during the *Work*, showing changes to the shop drawings and specifications, which record drawings shall be kept current by the *Contractor* and made available to the *Consultant* and the *Lender's Consultant* for review with each application for progress payment.
- 3.11.10 All required actions by the *Contractor* under this GC 3.11 shall be taken with reasonable promptness so as not to cause any delay in the *Construction Schedule*.

### **GC 3.12 USE OF THE WORK**

- 3.12.1 The *Contractor* shall confine construction machinery and equipment, storage of *Products*, and operations of employees to limits indicated by laws, ordinances, permits, or the *Contract Documents* and shall not unreasonably encumber the *Work* with *Products*.
- 3.12.2 The *Contractor* shall not load or permit to be loaded any part of the *Work* with a weight or force that will endanger the safety of the *Work*.
- 3.12.3 The *Owner* shall have the right to occupy phases of the *Work* as set out in the *Contract Documents* and to enter and occupy the *Work* in whole or in part for the purpose of placing fittings, furniture and equipment or for other uses including the intended use of the *Owner* before *Substantial Performance of the Work*, as provided for in the *Construction Schedule*. The *Contractor* shall cooperate with the *Owner*, the *Owner's Project Manager* and the *Consultant*, so as to permit the *Owner* to occupy and to place such fittings, furniture and equipment in the most efficient manner possible. Such entry and occupation shall not be considered as acceptance of the *Work* or in any way relieve the *Contractor* from responsibility to complete the *Contract*. The *Contractor* is responsible to ensure the completion of phases of the *Work* in accordance with the *Phased Occupancy Dates* and that the phases of the *Work* are ready for occupancy by the *Owner* in accordance with the *Contract Documents* including the requirements of subparagraphs .2 and .3 and, to the extent available, .4 of the definition of *Substantial Performance of the Work* as applicable to the respective phase of the *Work*. The *Contractor* acknowledges that *Substantial Performance of the Work* is only achieved in respect to the *Work* as a whole and not in respect of any phase of the *Work*.
- 3.12.4 The *Contractor* recognizes that part of the *Work* consists of the renovation of existing buildings and structures or the addition of a structure to an existing building and that the provision of patient care during construction is a priority for the *Owner* and acknowledges that it has reviewed the *Contract Documents* referred to in GC 3.12.5 below. The *Contractor* shall use all methods required to comply with the instructions set out in the *Contract Documents* including those referred to in GC 3.12.5 during the performance of the *Work*. The *Contractor* shall fully cooperate with the *Owner* in complying with the said instructions during the performance of the *Work*. Any costs incurred by the *Contractor* in complying with the said instructions shall be part of the *Guaranteed Price*.

- 3.12.5 The *Contractor* acknowledges that the *Contract Documents* include instructions titled “Special Procedures for Work in Hospitals” (Specification section 01390) which include instructions respecting *Owner’s* use of the *Existing Hospital* and infection control procedures including *CSA Standard Z317.13-03 Infection Control During Construction or Renovation of Health Care Facilities and Risk Assessment and Preventive Measures Checklist for Health Care Facility Construction and Renovation*. The *Contractor* acknowledges having read and understood the said instructions and agrees to comply with the procedures set out therein. The *Contractor* shall be responsible for any costs and expenses resulting from its failure to comply with these procedures.

### **GC 3.13 CUTTING AND REMEDIAL WORK**

- 3.13.1 The *Contractor* shall do the cutting and remedial *Work* required to make the several parts of the *Work* come together properly.
- 3.13.2 The *Contractor* shall co-ordinate the *Work* to ensure that this requirement is kept to a minimum.
- 3.13.3 Cutting and remedial *Work* shall be performed by specialists familiar with the *Products* affected and shall be performed in a manner to neither damage nor endanger the *Work*.

### **GC 3.14 CLEANUP**

- 3.14.1 The *Contractor* shall maintain the *Work* in a tidy condition and free from the accumulation of waste products and debris, other than that caused by the *Owner*, the *Owner’s* other contractors or their employees.
- 3.14.2 The *Contractor* shall remove waste products and debris, other than that resulting from the work of the *Owner*, the *Owner’s* other contractors or their employees, and shall leave the *Work* clean and suitable for occupancy by the *Owner* on the relevant *Phased Occupancy Date*, in the case of each phase of the *Work*, on the *Interim Completion Date*, in the case of the *Interim Work*, and on the *Substantial Performance Date*, in the case of the balance of the *Work*. The *Contractor* shall remove products, tools and construction machinery, and equipment not required for the performance of the remaining *Work*.
- 3.14.3 Prior to application for the final certificate for payment, the *Contractor* shall remove products, tools, construction machinery and equipment, and waste products and debris, other than that resulting from the work of the *Owner*, the *Owner’s* other contractors or their employees.
- 3.14.4 In the event of any dispute regarding the removal of waste products, debris, tools, equipment, etc. the *Owner* shall provide a written notice to the *Contractor* to remove the said waste and debris and allow a reasonable period of time to the *Contractor* for removing the said materials. If the *Contractor* fails to remove the materials within the time specified, the *Owner* may remove the waste products and debris and withhold an amount equal to such cost, to the extent that the *Consultant* shall determine to be just.

### **GC 3.15 CONTRACTOR ATTENDING MEETINGS**

- 3.15.1 The *Contractor* shall attend meetings with respect to the *Work* as may be directed by the *Consultant*. The *Contractor* shall not claim any extra compensation for attendance at these meetings. Each of the *Contractor* and the *Owner* shall provide a representative to attend such meeting that is able to make decisions on each of their respective behalf.

### **GC 3.16 STANDARD OF CARE**

- 3.16.1 In performing any and all services and obligations that it has agreed to perform in accordance with the terms of this *Contract*, the *Contractor* shall exercise the standard of care, skill and diligence that would normally be provided by an experienced and prudent *Contractor* supplying similar services for similar hospital projects in a first class and expeditious manner. The *Contractor* acknowledges and agrees that

throughout this *Contract* the *Contractor's* obligations, duties and responsibilities shall be interpreted in accordance with this standard and any default or alleged default by the *Contractor* in the performance of its obligations, duties and responsibilities shall similarly be interpreted in accordance with this standard. The *Contractor* shall exercise the same standard of due care and diligence in respect of any *Products*, personnel, or procedures which it may recommend to the *Owner*. The *Contractor* shall comply with all requirements of the *Owner* set forth in the *Contract Documents* including the *Contract Documents* referred to in GC 3.12.5. The *Contractor* shall also comply with all rules and directives issued by the *Owner* regarding the continued operations of the *Existing Hospital* so as not to disrupt the operations of the *Owner* and, except for any requirements of the *Owner* described in the preceding sentence, the cost, if any, and the additional time, if any, required to comply with any such rules and directives issued by the *Owner* shall be adjusted and compensated for by way of a *Change Order* or *Change Directive*, as applicable, as provided in GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.

### **GC 3.17 CONSTRUCTION LICENSE**

- 3.17.1 The *Owner* hereby provides to the *Contractor* a non-exclusive license to have access to and to use the *Place of the Work* sufficient to allow the *Contractor* to perform the *Work*.

## **PART 4 ALLOWANCES**

### **GC 4.1 CASH ALLOWANCES**

- 4.1.1 **[INTENTIONALLY DELETED];**
- 4.1.2 The *Guaranteed Price* includes cash allowances as set out in the specifications of the *Contract Documents* which shall be expended as the *Owner* directs through the *Consultant* by a *Cash Allowance Disbursement Authorization*.
- 4.1.3 Unless otherwise indicated, cash allowances cover the net cost to the *Contractor* of services, *Products*, construction machinery and equipment, freight, unloading, handling, storage, installation, and other authorized expenses incurred in performing the *Work* stipulated under the cash allowances but do not include any *Value Added Taxes* payable by the *Owner* to the *Contractor*.
- 4.1.4 Purchases from cash allowances must be authorized by written instructions issued by the *Consultant* as directed by the *Owner* and the form and methods of accounting for costs shall be agreed to by the *Owner*, the *Consultant* and the *Contractor* before proceeding with the purchase. Cash allowance review will be part of the regular site meeting.
- 4.1.5 The parties acknowledge that the following provisions apply to cash allowances included in the *Guaranteed Price*:
- .1 the *Contractor's Fee* and not the cash allowances include the *Contractor's* overhead and profit in connection with all cash allowances. Where costs under all cash allowances exceed in the aggregate the total amount of all cash allowances, the *Contractor* shall be compensated for overhead and profit on the excess as provided for in GC 6.2 – CHANGE ORDER;
  - .2 subject to GC 4.1.5.5 below the *Guaranteed Price* shall be adjusted by written *Change Order* to provide for any aggregate excess or deficit in all cash allowances;
  - .3 progress payments on account of *Work* authorized under cash allowances shall be included in the *Consultant's* monthly certificates for payment;
  - .4 modifications to the Construction Schedule shall be prepared by the *Contractor* and reviewed by the *Consultant* to show when items called for under cash allowances must be authorized and ordered so that the progress and completion of the *Work* are not delayed;



- .5 any surpluses in a cash allowance may at the election of the Owner be used to fund other cash allowances or to fund *Changes in the Scope of the Work* elsewhere in the *Contract* as may be authorized under a *Change Order* or a *Change Directive* in accordance with GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE as the case may be but without the imposition of overhead and profit.

## **GC 4.2 CONTRACTOR'S DESIGN CONTINGENCY**

- 4.2.1 The *Cost of the Work* and the *Guaranteed Price* include the *Contractor's Design Contingency*.
- 4.2.2 Subject to the *Owner's* responsibilities under this GC 4.2.2, the *Contractor's Design Contingency* shall apply to any and all changes, extras or costs attributable to:
  - .1 *Design Issues* which are readily apparent or properly inferable from the *Contract Documents* as forming part of the *Work* or contrary to *Good Industry Practice* as it relates to constructability of the *Work*;
  - .2 *Design Issues* caused by inconsistencies, conflicts, exclusions, interferences or gaps that are readily discoverable or properly inferable from the *Contract Documents*, and particularly, the plans, drawings and specifications; and
  - .3 *Design Issues* where the design intent is readily apparent or properly inferable from the *Contract Documents* but has not been fully detailed or specified.

The terms “readily discoverable”, “readily apparent” and “properly inferable” as used in the *Contract* shall be interpreted by taking into consideration the *Contractor's* experience, investigations, inspections and examinations as represented by the *Contractor* to the *Owner* in accordance with GC 1.5.1 and GC 3.4.1 and having regard to the standard of care required under GC 3.16– STANDARD OF CARE.

The *Owner* retains the responsibility for the ‘core’ efficacy and functionality of the design - the ability/capacity to: (1) produce the desired effect in terms of the building systems including information technology systems; (2) meet the requirements of the Ontario Building Code (but this shall not relieve the *Contractor* of the obligation to provide for all standard Code requirements applicable to the installation of the *Work* whether or not set out in the specifications); and (3) conform to the functional programming needs of the *Owner*. In assessing whether a *Design Issue* is properly characterized as the responsibility of the *Owner*, the *Consultant* shall have regard to the *Risk Assessment Guidelines*. The *Contractor* and the *Owner* acknowledge that the *Risk Assessment Guidelines* are provided for information only and are not complete or exhaustive.

Subject to and without limiting the *Owner's* responsibilities under the preceding paragraph, the *Contractor* must deliver fully functional and operational systems and all components shown in the drawings have to be provided as fully complete and fully functional systems.

- 4.2.3 When the *Contractor* identifies a *Design Issue* the *Contractor* shall promptly notify the *Consultant* in writing under a request for information of such *Design Issue* and may propose a resolution of the *Design Issue*. Upon receipt of the *Contractor's* notification and proposed resolution, if any, the *Consultant* shall (a) if a proposed resolution is provided by the *Contractor*, proceed to review the proposed resolution and either: (i) confirm that such resolution is acceptable (and a resolution will be considered acceptable if such resolution meets the requirements of the first sentence of GC 4.2.6); (ii) reject the proposed resolution and request additional information to be provided or request an alternative resolution be proposed by the *Contractor*; or (iii) reject the proposed resolution and provide instructions to the *Contractor* of an acceptable resolution; or (b) if no resolution is proposed by the *Contractor*, provide instructions to the *Contractor* for the acceptable resolution. As soon as the *Consultant* has confirmed to the *Contractor* an acceptable resolution of the *Design Issue* the *Contractor* shall proceed to implement such acceptable resolution. If the *Consultant* characterizes the *Design Issue* as a *Contractor's Design*

*Contingency* matter the *Consultant* shall issue a *Supplemental Instruction* and the cost, if any, of implementing the acceptable resolution to the *Design Issue* shall form part of the *Contractor's Design Contingency*. If the *Consultant* characterizes the *Design Issue* as a matter that is not properly considered a *Contractor's Design Contingency* matter the *Consultant* shall request the *Owner* issue a *Contemplated Change Notice* or a *Change Directive*, as applicable in the circumstances and the cost, if any, of implementing the acceptable resolution to the *Design Issue* and the additional time, if any, required to implement the acceptable resolution of the *Design Issue* shall be documented in a *Change Order*. If either the *Owner* or the *Contractor* is of the view that the *Design Issue* is not properly characterized by the *Consultant* or does not agree with the *Consultant's* decision regarding what constitutes an acceptable resolution to the *Design Issue*, then either the *Owner* or the *Contractor* may dispute the characterization of the *Design Issue* or the *Consultant's* decision regarding what constitutes an acceptable resolution of the *Design Issue* pursuant to GC 4.2.7. The *Consultant's* response to any *Design Issue* will be provided in accordance with GC 2.2.9. Any professional design services of the *Consultant* whether to issue the *Supplemental Instruction*, *Contemplated Change Notice* or *Change Directive* or otherwise will be an *Owner* cost. In assessing whether a *Design Issue* is properly characterized as a *Contractor's Design Contingency* matter, the *Consultant* shall have regard to the *Risk Assessment Guidelines*. The *Contractor* and the *Owner* acknowledge that the *Risk Assessment Guidelines* are provided for information only and are not complete or exhaustive.

- 4.2.4 When the *Consultant* identifies a *Design Issue* the *Consultant* shall promptly notify the *Contractor* of such *Design Issue*, in writing as a *Supplemental Instruction* or by providing a *Contemplated Change Notice* or a *Change Directive*, as applicable in the circumstances. If issued as a *Supplemental Instruction* the *Contractor* may review the *Design Issue* and propose an alternative resolution to the *Consultant*. Upon receipt of the *Contractor's* proposed alternative resolution, the *Consultant* shall proceed to review the proposed alternative resolution and either: (a) confirm that such resolution is acceptable (and a resolution will be considered acceptable if such resolution meets the requirements of the first sentence of GC 4.2.6); (b) reject the proposed resolution, request additional information to be provided or request a further alternative resolution be proposed by the *Contractor*; or (c) reject the proposed resolution and provide instructions to the *Contractor* of an acceptable resolution. As soon as the *Consultant* has confirmed to the *Contractor* an acceptable resolution of the *Design Issue* the *Contractor* shall proceed to implement such acceptable resolution. If the *Consultant* characterizes the *Design Issue* as a *Contractor's Design Contingency* matter the *Consultant* shall issue a *Supplemental Instruction* and the cost, if any, of implementing the acceptable resolution to the *Design Issue* shall form part of the *Contractor's Design Contingency*. If the *Consultant* characterizes the *Design Issue* as a matter that is not properly considered a *Contractor's Design Contingency* matter the *Consultant* shall request the *Owner* issue a *Contemplated Change Notice* or a *Change Directive*, as applicable in the circumstances, and the cost, if any, of implementing the acceptable resolution to the *Design Issue* and the additional time, if any, required to implement the acceptable resolution of the *Design Issue* shall be documented in a *Change Order*. If either the *Owner* or the *Contractor* is of the view that the *Design Issue* is not properly characterized by the *Consultant* or does not agree with the *Consultant's* decision regarding what constitutes an acceptable resolution to the *Design Issue* either the *Owner* or the *Contractor* may dispute the characterization of the *Design Issue* or the *Consultant's* decision regarding what constitutes an acceptable resolution of the *Design Issue* pursuant to GC 4.2.7. The *Consultant's* response will be provided in accordance with GC 2.2.9. Any professional design services of the *Consultant* whether to issue the *Supplemental Instruction*, *Contemplated Change Notice* or *Change Directive* or otherwise will be an *Owner* cost. In assessing whether a *Design Issue* is properly characterized as a *Contractor's Design Contingency* matter, the *Consultant* shall have regard to the *Risk Assessment Guidelines*. The *Contractor* and the *Owner* acknowledge that the *Risk Assessment Guidelines* are provided for information only and are not complete or exhaustive.
- 4.2.5 The *Contractor* shall provide the *Consultant*, the *Owner* and the *Owner's Project Manager* with a detailed weekly update report on the status of all outstanding *Design Issues* in a form satisfactory to the *Consultant* and the *Owner*.
- 4.2.6 An acceptable resolution to a *Design Issue* as referred to in GC 4.2.3 and GC 4.2.4 shall be a solution that is in all respects consistent with the design intent and quality standards of the *Contract Documents*, which

will not interfere with the efficient operations of the *Owner* and which will not increase the life cycle costs. If a *Consultant* solution is of a higher quality not consistent with the design intent and quality standards of the *Contract Documents*, the *Contractor* will be entitled to a *Change in the Scope of the Work* in accordance with GC 6.2 – CHANGE ORDER.

- 4.2.7 If either the *Contractor* or the *Owner* is of the view that a *Design Issue* is not properly characterized by the *Consultant* or does not agree with the *Consultant's* decision regarding what constitutes an acceptable resolution to the *Design Issue* either the *Owner* or the *Contractor* may dispute the characterization of the *Design Issue* or the *Consultant's* decision regarding what constitutes an acceptable resolution to the *Design Issue* and such issues will be determined in accordance with PART 8 - DISPUTE RESOLUTION. The *Contractor* acknowledges that notwithstanding any such dispute the *Consultant* may issue a *Supplemental Instruction* to the *Contractor* for a resolution of the *Design Issue* and the *Contractor* shall proceed to implement such resolution of the *Design Issue* in accordance with the *Supplemental Instruction* issued by the *Consultant* pending resolution of the dispute and subject to GC 8.1.3.
- 4.2.8 The *Contractor's Design Contingency* is included in the *Cost of the Work* and the *Guaranteed Price* and the *Contractor* is solely responsible for all costs to remedy all *Design Issues* that are properly characterized as *Contractor's Design Contingency* matters and the *Contractor* will not be entitled to any additional compensation or change in the *Contract Time* in respect of any and all *Design Issues* that are properly characterized as *Contractor's Design Contingency* matters, subject in each case to GC 4.2.6 and to the responsibility of the *Owner* at the *Owner's* cost for the provision of professional design services as specifically provided in GC 4.2.3 and GC 4.2.4. Subject to the preceding sentence, the *Contractor* acknowledges and agrees that the *Contractor* shall have no recourse against the *Owner* in respect to any *Contractor's Design Contingency* matter or any costs directly or indirectly arising out of *Design Issues* that are properly characterized as *Contractor's Design Contingency* matters. The *Contractor* is not accountable to the *Owner* for the expenditure of the amount the *Contractor* has carried as the *Contractor's Design Contingency* and the *Owner* has no entitlement to claim any unused portion, if any, of the *Contractor's Design Contingency*. Payment of the *Guaranteed Price* to the *Contractor* (which, for greater certainty, shall include any unused portion of the *Contractor's Design Contingency*) shall fully satisfy the *Contractor* in respect to its costs to carry the *Contractor's Design Contingency* and all costs of the *Contractor* to remedy all *Design Issues* that are properly characterized as *Contractor's Design Contingency* matters.

## **PART 5 PAYMENT**

### **GC 5.1 [INTENTIONALLY DELETED];**

### **GC 5.2 ACCOUNTING AND AUDIT**

- 5.2.1 The *Contractor* shall maintain and keep accurate *Project* records (which mean all tangible records, documents, computer printouts, electronic information, books, plans, drawings, specifications, accounts or other information) relating to the *Work* for a period of seven (7) years from the date of *Substantial Performance of the Work*. The *Contractor* shall maintain the original *Project* records in its office in Ontario until all claims (which means any claim, demand, liability, damage, loss, cost, expense, suit, action or cause of action) have been settled as required by requirements of law.
- 5.2.2 In addition to other rights of inspection contemplated in the *Contract Documents*, the *Contractor* shall allow the *Owner*, the *Consultant*, the *Lender's Consultant* or other persons authorized by the *Owner* access to the *Project* records as they pertain to *Work* performed on a reimbursable basis pursuant to GC 6.2.3.2 or unit price basis pursuant to GC 6.2.3.3 during the course of the *Work* and for such period of time that the *Contractor* is required to maintain the records set out in GC 5.2.1. The *Contractor* shall be provided with forty-eight (48) hours prior notice for such access. The *Contractor* shall promptly provide at the sole cost of the *Owner*, a certified copy of any part of such *Project* records required by the *Owner* when requested by the *Owner*.

- 5.2.3 The *Contractor* shall ensure that equivalent provisions to those provided in GC 5.2.1 and GC 5.2.2 are made in each *Subcontractor's* and *Supplier's* contract (and shall require the *Subcontractors* and *Suppliers* to incorporate same into every level of contract thereunder) for any part of the *Work* in order among other things, to provide the *Owner* with access to *Project* records as contemplated herein.
- 5.2.4 The provisions of GC 5.2.1, 5.2.2 and 5.2.3 shall only apply with respect to *Change Orders*.
- 5.2.5 The *Contractor* shall submit three (3) copies of a monthly construction status report to the *Owner* by the twentieth (20<sup>th</sup>) *Working Day* of each month which shall include an update of the *Construction Schedule* prepared in accordance with all the requirements of GC 3.5 – CONSTRUCTION SCHEDULE. The *Contractor* shall endeavour to use project management software compatible with that of the *Owner*. This document will appropriately address significant aspects of, and variances in, the progress of the *Work*, and shall include, without limitation, an executive bar chart summary of the *Construction Schedule*, the current schedule performance index (developed in accordance with *Good Industry Practice*) and the *Contractor's* narrative report addressing any significant problems and decisions and pending claims and a detailed report showing the costs to complete the balance of the *Work*. Included also will be an executive summary of the progress to date of the building systems. A financial status report will be included together with report of any pending or other matters or claims that could have a financial impact on the *Project*, including without limitation, a report on any labour disruptions or strikes that may have occurred or are pending. An updated cash flow report and projections in conjunction with the monthly *Construction Schedule* update will also be included, showing a cash flow graph indicating actual cash flow against projected cash flow. Progress photos from different views to indicate the progress of the *Work* are also to be included as well as a safety report addressing any incidents or accidents. The progress photos must be in digital format and must indicate the date and location of the photograph. Items of immediate concern are to be highlighted, noting when decisions must be reached in order to keep the *Project* on schedule. Also included shall be approved *Change Orders*, priced change notices awaiting approval and *Contemplated Change Notices* and the status of the *Contractor's Design Contingency* issues.

### **GC 5.3 APPLICATIONS FOR PROGRESS PAYMENT**

- 5.3.1 Applications for payment on account as provided in paragraph 7.1.1 of Article A-7 of the Agreement – PAYMENT may be made monthly as the *Work* progresses.
- 5.3.2 The *Owner* and the *Contractor* acknowledge that the *Guaranteed Price* includes the *Cost of the Financing* and that for the purpose of calculating the amount of any legislative holdback under the *Contract* such determination shall be based only upon the *Cost of the Work*.
- 5.3.3 Application for payment by the *Contractor* shall be dated the last day of the agreed monthly payment period and the amount claimed shall be based on the value, proportionate to the *Cost of the Work*, of the *Work* performed forming part of the *Cost of the Work* including *Products* delivered to the *Place of the Work* at that date. The application for payment shall also include and separately state the value of the *Work* performed in respect to *Change Orders* or *Change Directives* the payment of which the *Owner* is responsible for and which are included within *Additional Owner Payments*. Applications for payment shall be made to the *Consultant* and to the *Lender's Consultant* at the same time. The *Lender's Consultant* shall be responsible for verifying the application for payment to the *Lender*.
- 5.3.4 The *Contractor* shall submit to the *Consultant* and the *Lender's Consultant*, at least fourteen (14) days before the first application for payment, a schedule of values for the parts of the *Work* so as to facilitate a valuation of applications for payment.
- 5.3.5 The schedule of values shall be made out in such form, broken down in such detail and supported by such evidence as the *Owner* and the *Consultant* and the *Lender's Consultant* may reasonably direct and when accepted by the *Consultant* and the *Lender's Consultant* and the *Owner*, shall be used as the basis for applications for payment, unless it is found to be in error.

- 5.3.6 Claims for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall be supported by such evidence as the *Consultant* may reasonably require to establish the value and delivery of the *Products*.
- 5.3.7 The *Contractor* shall submit to the *Owner*, the *Consultant* and the *Lender's Consultant* a statement based on the schedule of values, a Workplace Safety & Insurance Board Certificate of Clearance, the updated *Construction Schedule* provided under GC 5.2.5 and an updated cash flow with each application for payment.
- 5.3.8 With the second and all subsequent applications for payment (including, without limitation but for greater certainty, any payment to be made under paragraph 7.1.2 of Article A-7 of the Agreement – PAYMENT), except the final payment and release of holdback applications, the *Contractor* shall submit a Statutory Declaration on CCDC Form 9A.

#### **GC 5.4 PROGRESS PAYMENTS**

- 5.4.1 The *Consultant* will issue to the *Owner*, no later than ten (10) *Working Days* after the receipt of an application for payment from the *Contractor* submitted in accordance with GC 5.3 – APPLICATIONS FOR PROGRESS PAYMENT, a certificate addressed to the *Owner* of the progress of the *Work* in relation to the schedule of values, a copy of which shall be provided to the *Contractor* and the *Lender's Consultant*. The *Consultant* will issue a certificate for payment to the *Owner* of *Additional Owner Payments* payable by the *Owner* in respect to the application for payment from the *Contractor* in the amount applied for or in such other amount as the *Consultant* determines to be properly due. If the *Consultant* requires amendments to the application, the *Consultant* will promptly notify the *Contractor* in writing giving reasons for the amendment. The *Lender's Consultant* will be responsible for issuing certificates for payment to the *Lender* and *Project Co* respecting *Base Progress Payments*. The *Owner* and the *Consultant* are not responsible for any delay in issuing a certificate for payment in respect of or for payment of *Base Progress Payments* on account of the activities of the *Lender's Consultant* and/or the *Lender*.
- 5.4.2 Payment to the *Contractor* on account of *Base Progress Payments* and monthly progress payments in respect to *Additional Owner Payments* shall be made no later than ten (10) *Business Days* after the date of a certificate for payment issued by *Lender's Consultant* or the *Consultant*, as applicable.
- 5.4.3 **[INTENTIONALLY DELETED].**
- 5.4.4 All monthly progress payments for the period following the *Substantial Performance Date* shall be paid by the *Owner* and shall be deemed to be *Additional Owner Payments*. Applications for such progress payments will continue to be provided to the *Lender's Consultant* so long as any amount that has been held back by the *Owner* pursuant to the *Contract* for the *Work* completed prior to the *Substantial Performance Date* remains unpaid.
- 5.4.5 Notwithstanding the time periods provided regarding the approval and certification of payment by the *Consultant* or the *Lender's Consultant* in GC 5.4.1 and for payment in GC 5.4.2, respectively, the total period of time between receipt of the application for payment by the *Contractor* and payment by the *Owner* shall be no more than twenty-five (25) *Business Days*, except in respect to any amount held back from such payment by the *Owner* in accordance with the *Contract*.
- 5.4.6 Construction Liens
- .1 Notwithstanding anything else in this PART 5 – PAYMENT, in the event a claim for a construction lien is registered against the *Project* lands arising from the performance of the *Work*, or the *Owner* receives any written notice of lien arising from the performance of the *Work*, and unless the *Contractor* makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to the *Owner*, acting reasonably, the

*Owner* shall be entitled to withhold such portion of any payment otherwise due to the *Contractor* in an amount *Owner* reasonably determines would be required to satisfy the applicable lien claimant and any costs and expenses incurred by *Owner* in connection therewith including such amount on account of costs of the lien claimant such that the *Owner* may upon payment of the amount of the lien claim together with such costs into court obtain an order vacating such lien pursuant to the *Construction Lien Act* (Ontario) until such time as such claim has been dealt with as provided below.

- .2 In the event that a written notice of a construction lien arising from the performance of the *Work* is received by the *Owner*, and unless the *Contractor* makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to the *Owner*, acting reasonably, the *Contractor* shall, within thirty (30) days at its sole expense, arrange for the withdrawal or other disposal of the written notice of a lien pursuant to the *Construction Lien Act* (Ontario).
- .3 If a construction lien arising from the performance of the *Work* is registered against the *Project* lands, and unless the *Contractor* makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to the *Owner*, acting reasonably, the *Contractor* shall, within thirty (30) days, at its expense, vacate or discharge the lien from title to the *Project* lands. If the lien is merely vacated, the *Contractor* shall, if requested, undertake the *Owner's* defence of any subsequent action commenced in respect of the lien at the *Contractor's* expense.
- .4 If the *Contractor* fails or refuses to vacate or discharge a construction lien or written notice of lien arising from the performance of the *Work* within the time prescribed above, and unless the *Contractor* makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to the *Owner*, acting reasonably, the *Owner* shall, at its option, be entitled to take all steps necessary to vacate and/or discharge the lien, and all costs incurred by the *Owner* in doing so (including, without limitation, legal fees on a full indemnity basis and any payment which may ultimately be made out of or pursuant to security posted to vacate the lien) shall be for the account of the *Contractor*, and the *Owner* may deduct such amounts from the amounts otherwise due or owing to the *Contractor*.
- .5 Without limiting any of the foregoing, the *Contractor* shall satisfy all judgments and pay all costs resulting from any construction liens arising from the performance of the *Work* or any actions brought in connection with any such liens, or in connection with any other claim or lawsuit brought against the *Owner* by any person that provided services or materials to the *Project* lands which constituted part of the *Work*, and the *Contractor* shall indemnify the *Owner*, the *Consultant* and the *Lender's Consultant*, as well as their agents, officers, directors, employees and consultants and their successors and assigns for any and all costs (including, without limitation, legal fees on a full indemnity basis) they may incur in connection with such claims or actions. The *Contractor* may at its option elect to defend any such claim or action at the *Contractor's* expense, and where the *Owner* defends the claim or action the *Contractor* shall have a right to consent, acting reasonably, in respect to any settlement between the *Owner* and the other party to the claim or action.
- .6 The provisions of GC 5.4.5.1 through GC 5.4.5.5 inclusive do not apply to construction liens filed by the *Contractor* which are claimed as a result of any default of the *Owner* to make payments to the *Contractor* in accordance with the terms of the *Contract*.

#### **GC 5.4A COMPLETION OF THE INTERIM WORK**

- 5.4A.1 The *Contractor* shall deliver a notice to the *Owner* and the *Consultant* at least ninety (90) days prior to the date anticipated by the *Contractor* to be the *Interim Completion Date*. The *Contractor* acknowledges that the *Owner* needs a minimum of ninety (90) days notice prior to the anticipated *Interim Completion Date* to prepare for the *Commissioning* in respect of the *Interim Work*. The *Contractor* shall advise the *Owner* and

the *Consultant* of any change in the anticipated date. The *Contractor* shall, by the date which is twenty (20) days prior to the anticipated *Interim Completion Date* as set out in the *Contractor's* notice, prepare a list in electronic format on software that identifies deficiencies by division, by trade and by location (the "*Interim Preliminary Minor Deficiencies List*") of *Minor Deficiencies* respecting the *Interim Work* including an estimate of the cost of and the time for rectifying such *Minor Deficiencies*.

- 5.4A.2 The *Contractor* shall reconfirm the anticipated *Interim Completion Date* in a notice given to the *Owner* and to the *Consultant* twenty (20) days prior to the anticipated *Interim Completion Date* which notice shall include the *Interim Preliminary Minor Deficiencies List*. The *Contractor* shall plan for start-up and verification of all systems limited to that described for *Completion of the Interim Work* to be completed no later than seven (7) days prior to the anticipated *Interim Completion Date*. The *Contractor* shall reconfirm the anticipated *Interim Completion Date* in a notice to the *Owner* and the *Consultant* by the date which is ten (10) days prior to the anticipated *Interim Completion Date*. The *Consultant* shall then have the next following ten (10) *Working Days* to review and inspect the *Interim Work* for the purpose of confirming the achievement of *Completion of the Interim Work*, providing the *Owner* and the *Contractor* with its report thereon and, taking into account the *Interim Preliminary Minor Deficiencies List*, preparing its own list of *Minor Deficiencies* respecting the *Interim Work* (the "*Interim Minor Deficiencies List*") and the *Consultants'* estimate of the cost of and the time for rectifying *Minor Deficiencies* set out in the *Interim Minor Deficiencies List*, and reporting on all such matters to the *Owner* and the *Contractor*. If the *Consultant* is satisfied based on its inspection that *Completion of the Interim Work* has been achieved, the *Consultant* shall state this in its report and shall state the date on which the *Consultant* determines that *Completion of the Interim Work* was achieved. Failure to include an item on the *Interim Minor Deficiencies List* does not alter the responsibility of the *Contractor* to complete the *Interim Work*.
- 5.4A.3 The *Consultant* shall state the *Interim Completion Date* as set out in its report delivered under GC 5.4A.2 in a certificate.
- 5.4A.4 The *Consultant* must prepare the *Interim Minor Deficiencies List* before a certificate of *Completion of the Interim Work* is issued, but the *Consultant* shall not withhold the certificate of *Completion of the Interim Work* by reason solely that there are *Interim Minor Deficiencies*. Save and except with the *Owner's* prior written approval, the *Contractor* shall complete all *Interim Minor Deficiencies* no later than one hundred and twenty (120) days from the date when *Completion of the Interim Work* is certified, unless the reasons for any delay are acceptable to the *Owner* or the delay is caused by the *Owner* or a person for whom the *Owner* is, at law, responsible.
- 5.4A.5 The *Owner* may withhold from the payment otherwise due on the *Interim Reimbursement Payment Date* a holdback amount that is [REDACTED] ([REDACTED]%) of the amount estimated by the *Consultant* for the *Owner* to complete and rectify the *Interim Minor Deficiencies*. The *Consultant* shall inspect the completion of the *Interim Minor Deficiencies* and shall provide a monthly progress report to the *Owner* describing the *Interim Minor Deficiencies* which have been completed to the satisfaction of the *Consultant* and the *Owner* shall release from such holdback the amount of any holdback allocated to the *Interim Minor Deficiencies* which have been completed. If at any time after the one hundred and twenty (120) day period for completion of the *Interim Minor Deficiencies*, any of the *Interim Minor Deficiencies* are not completed within ten (10) *Working Days* of the *Contractor's* receipt of a written notice from the *Owner* to correct the *Interim Minor Deficiencies* or the *Contractor* is not diligently working towards completion of the *Interim Minor Deficiencies* to the *Consultant's* satisfaction, and unless the *Owner* otherwise agrees or the reasons for any delay are acceptable to the *Owner* or the delay is caused by the *Owner* or a person for whom the *Owner* is responsible at law or under the terms of the *Contract*, the *Owner* may engage others to perform the work necessary to complete and rectify such *Interim Minor Deficiencies* at the risk and cost of the *Contractor* and the *Owner* may deduct such cost from the holdback amount or any other amount remaining owing by the *Owner* to the *Contractor*. If the cost of completion and rectification of any *Interim Minor Deficiencies* exceeds the amount held back by the *Owner* then the *Contractor* shall reimburse the *Owner* for all such excess costs.
- 5.4A.6 The *Contractor* shall assign to the *Owner* and submit with the application for *Completion of the Interim Work*, all guaranties, warranties, (whether from manufacturers, *Subcontractors* or *Suppliers*), certificates,

preliminary testing and balancing reports, distribution system diagrams, maintenance and operation instructions, maintenance manuals and materials and any other materials or documentation required to be submitted under the *Contract* and required for the proper operation of the *Interim Work* (collectively, the "*Interim Project Deliverables*"). If the *Contractor* requests, the *Contractor* and the *Consultant* shall within sixty (60) days following the request of the *Contractor* settle and agree upon a list specifying in reasonable detail the items to be assigned and submitted under the foregoing sentence. If the *Contractor* is unable to provide any of the required guaranties, warranties, certificates, preliminary testing and balancing reports, distribution system diagrams, maintenance and operation instructions, maintenance manuals and materials or other materials or documentation for any reason, the *Contractor* may submit a list of the outstanding *Interim Project Deliverables* and, if a delay in the delivery of such outstanding *Interim Project Deliverables* will not impair the safety, security or health of the occupants of the *Interim Work*, such outstanding *Interim Project Deliverables* shall be included as *Interim Minor Deficiencies*. Failure to submit any of the *Interim Project Deliverables* that are required for the safe occupation and use of the *Interim Work* and as may be necessary for the security and health of the occupants of the *Interim Work* shall be grounds for the *Consultant* to reject the *Contractor's* application for *Completion of the Interim Work*. The assignment by the *Contractor* of all guaranties and warranties included in the *Interim Project Deliverables* shall expressly reserve the right of the *Contractor* to make any claims under such guaranties and warranties for the repair or replacement of any *Interim Work* and such assignment shall in no way prejudice any rights of or benefits accruing to the *Contractor* pursuant to such guaranties and warranties. For greater certainty, nothing herein is intended to constitute a release or waiver of the obligations of the *Contractor* to submit and assign (as applicable) to the *Owner* all of the *Interim Project Deliverables*.

The *Contractor* shall provide *As-Built Drawings* and specifications, *Record Documents*, spare parts and shop drawings in respect of the *Interim Work* as soon as possible and in any event within thirty (30) days of the *Interim Completion Date*.

- 5.4A7 The *Consultant* shall provide reasonable assistance to the *Contractor* in satisfying the requirements to obtain occupancy permits or letters from the City of Mississauga in respect of the *Interim Work*.

## **GC 5.5 SUBSTANTIAL PERFORMANCE OF THE WORK**

- 5.5.1 The *Contractor* shall deliver a notice to the *Owner* and the *Consultant* at least ninety (90) days prior to the date anticipated by the *Contractor* to be the *Substantial Performance Date*. The *Contractor* acknowledges that the *Owner* needs a minimum of ninety (90) days notice prior to the anticipated *Substantial Performance Date* to prepare for the *Commissioning*. The *Contractor* shall advise the *Owner* and the *Consultant* of any change in the anticipated date. The *Contractor* shall, by the date which is twenty (20) days prior to the anticipated *Substantial Performance Date* as set out in the *Contractor's* notice, prepare a list, in electronic format on software that identifies deficiencies by division, by trade and by location (the "*Contractor's Preliminary Minor Deficiencies List*") of *Minor Deficiencies* including an estimate of the cost of and the time for rectifying such *Minor Deficiencies*.
- 5.5.2 The *Contractor* shall reconfirm the anticipated *Substantial Performance Date* in a notice given to the *Owner* and to the *Consultant* twenty (20) days prior to the anticipated *Substantial Performance Date* which notice shall include a copy of the *Contractor's Preliminary Minor Deficiencies List*. The *Contractor* shall plan for start - up and verifications of all systems to be completed no later than seven (7) days prior to the anticipated *Substantial Performance Date*. The *Contractor* shall reconfirm the anticipated *Substantial Performance Date* in a notice to the *Owner* and the *Consultant* by the date which is ten (10) days prior to the anticipated *Substantial Performance Date*. The *Consultant* shall then have the next following ten (10) *Working Days* to review and inspect the *Work* for the purpose of confirming the achievement of *Substantial Performance of the Work* and providing its report thereon pursuant to GC 5.5.4 and certifying substantial performance of the *Contract* in accordance with the *Construction Lien Act* (Ontario) pursuant to GC 5.5.3 and, taking into account the *Contractor's Preliminary Minor Deficiencies List*, preparing its own list of *Minor Deficiencies* (the "*Minor Deficiencies List*") and the *Consultant's* estimate of the cost of and the time for rectifying *Minor Deficiencies* set out in the *Minor Deficiencies List*.



- 5.5.3 When the *Consultant* is satisfied that substantial performance of the *Contract* in accordance with the *Construction Lien Act* (Ontario) has been achieved the *Consultant* shall provide the *Contractor* and the *Owner* with a certificate of substantial performance in accordance with the *Construction Lien Act* (Ontario).
- 5.5.4 When the *Consultant* is satisfied that *Substantial Performance of the Work* has been achieved the *Consultant* shall provide to the *Owner* and to the *Contractor* a report confirming the *Minor Deficiencies List* and the date on which the *Consultant* determines that *Substantial Performance of the Work* was achieved. Failure to include an item on the *Minor Deficiencies List* does not alter the responsibility of the *Contractor* to complete the *Work*.
- 5.5.5 The *Consultant* shall state the *Substantial Performance Date* as set out in its report delivered under GC 5.5.4 in a certificate.
- 5.5.6 The *Consultant* shall prepare the *Minor Deficiencies List* before a certificate of *Substantial Performance of the Work* is issued, but the *Consultant* shall not withhold the certificate of *Substantial Performance of the Work* by reason solely that there are such *Minor Deficiencies*.
- 5.5.7 The *Contractor* shall publish in a construction trade newspaper in the area of the location of the *Work* a copy of the certificate of substantial performance in accordance with the *Construction Lien Act* (Ontario) and the *Contractor* shall provide suitable evidence of the publication to the *Consultant* and the *Owner*.
- 5.5.8 The *Contractor* shall assign to the *Owner* and submit with the application for *Substantial Performance of the Work*, all guaranties, warranties, (whether from manufacturers, *Subcontractors* or *Suppliers*), certificates, preliminary testing and balancing reports, distribution system diagrams, maintenance and operation instructions, maintenance manuals and materials and any other materials or documentation required to be submitted under the *Contract* and otherwise required for the proper use and operation of the *Work* (collectively, the "*Project Deliverables*"). If the *Contractor* requests, the *Contractor* and the *Consultant* shall within sixty (60) days following the request of the *Contractor* settle and agree upon a list specifying in reasonable detail the items to be assigned and submitted under the foregoing sentence. If the *Contractor* is unable to provide any of the required guaranties, warranties, certificates, preliminary testing and balancing reports, distribution system diagrams, maintenance and operation instructions, maintenance manuals and materials or other materials or documentation for any reason, the *Contractor* may submit a list of the outstanding *Project Deliverables* and, if a delay in the delivery of such outstanding *Project Deliverables* will not impair the safety, security or health of the occupants of the *Project* such outstanding *Project Deliverables* shall be included as *Minor Deficiencies*. Failure to submit any of the *Project Deliverables* that are required for the safe occupation and use of the *Work* and as may be necessary for the security and health of the occupants of the *Project* shall be grounds for the *Consultant* to reject the *Contractor's* application for *Substantial Performance of the Work*. For the purposes of GC 5.7.3 and any holdback to be taken as contemplated thereunder, the value of such outstanding *Project Deliverables* shall, without regard to the degree or quantum of such outstanding *Project Deliverables*, be set at \$[REDACTED]. The assignment by the *Contractor* of all guarantees and warranties shall expressly reserve the right of the *Contractor* to make any claims under such guarantees and warranties for the repair or replacement of any *Work* and such assignment shall in no way prejudice any rights of or benefits accruing to the *Contractor* pursuant to such guarantees and warranties. For greater certainty, nothing herein is intended to constitute a release or waiver of the obligation of the *Contractor* to submit and assign (as applicable) to the *Owner* all of the *Project Deliverables*.
- 5.5.9 The submission of an application for payment upon *Substantial Performance of the Work* shall constitute a waiver by the *Contractor* of all claims whatsoever against the *Owner* under this *Contract*, whether for a change in the *Guaranteed Price*, extension of *Contract Time* or otherwise, except (a) those made in writing prior to the *Contractor's* application for payment upon *Substantial Performance of the Work* and still unsettled, (b) any third party claim which *Contractor* was not aware of at such time and in respect to which *Contractor* is entitled to indemnification from *Owner* in accordance with the *Contract*, and (c) subject to any subsequent waiver under GC 12.2.2, claims arising out of any act or omission of the *Owner*

(or those for whom the *Owner* is responsible at law or under the terms of the *Contract*) after the date of the waiver and third party claims arising after the date of the waiver.

- 5.5.10 The *Consultant* shall provide reasonable assistance to the *Contractor* in satisfying the requirements to obtain occupancy permits or letters from the City of Mississauga.

## **GC 5.6 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK**

5.6.1 After the issuance of the certificate of *Substantial Performance of the Work*, the *Contractor* shall:

- .1 Submit an application for payment of the holdback amount;
- .2 Submit a written request for release of holdback including a declaration that no written notices of lien arising from the performance of the *Work* have been received by it;
- .3 Submit a Statutory Declaration CCDC 9A; and
- .4 Submit an original Workplace Safety & Insurance Board Certificate of Clearance.

5.6.2 After the receipt of the documents set out in GC 5.6.1 and the expiration of a period of forty five (45) days from the date of publication of the certificate of substantial performance pursuant to the *Construction Lien Act* (Ontario), the *Consultant* shall issue a certificate for payment of the holdback amount.

5.6.3 Prior to date of the release of the holdback, the *Contractor* shall have removed from the *Place of the Work* all supplies, waste materials, rubbish and temporary facilities and all personnel except as required to achieve *Total Completion* or to correct any remaining *Minor Deficiencies*.

5.6.4 Subject to the provisions of GC 5.4.6 and the removal of any claims for lien preserved or perfected pursuant to the *Construction Lien Act* (Ontario) arising from the performance of the *Work*, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable on the second *Business Day* following the expiration of forty-five (45) days from the date of publication of the certificate of substantial performance pursuant to the *Construction Lien Act* (Ontario).

## **GC5.6A PROGRESSIVE RELEASE OF HOLDBACK**

5.6A.1 For greater certainty and without in any way limiting the obligations of the *Owner* under GC 5.6 – PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK, the *Contractor* may at its option release holdback amounts retained by the *Contractor* in respect of *Work* completed by *Subcontractors* prior to *Substantial Performance of the Work*. At the written request of the *Contractor* the *Consultant* shall conduct inspections to certify that such *Work* has been completed and the date of completion of the *Work*. Within ten (10) *Working Days* from receipt of the *Contractor's* written request, the *Consultant* shall inspect the *Work* of the relevant *Subcontractor* and, if the *Consultant* is satisfied that the *Work* has been completed, issue its certificate as aforesaid to the *Owner*, the *Contractor* and the *Subcontractor*.

5.6A.2 Notwithstanding the provisions of GC 5.6A.1, and notwithstanding the wording of any certificate issued by the *Consultant* pursuant thereto, the *Contractor* shall ensure that such *Work* of *Subcontractors* is protected pending the issuance of a final certificate for payment and be responsible for the correction of any defects in the *Work* as otherwise provided in the *Contract* regardless of whether or not the defects were apparent when such certificates were issued.

## **GC 5.7 COMPLETION**

- 5.7.1 The *Contractor* shall provide *As - Built Drawings* and specifications, *Record Documents*, spare parts and shop drawings as soon as possible and in any event within thirty (30) days of the *Substantial Performance Date*.
- 5.7.2 Save and except with the *Owner's* prior written approval, the *Contractor* shall, without limitation to the provisions of GC 5.4A.5 with respect to the completion of the *Interim Minor Deficiencies*, complete all *Minor Deficiencies* and assign and provide all of the *Project Deliverables* that remain outstanding no later than one hundred and twenty (120) days from the date when *Substantial Performance of the Work* is certified, unless the reasons for any delay are acceptable to the *Owner* or the delay is caused by the *Owner* or a person for whom the *Owner* is, at law or under the terms of the *Contract*, responsible.
- 5.7.3 The *Owner* may withhold from the payment otherwise due on the *Final Reimbursement Payment Date* a holdback amount that is [REDACTED] ([REDACTED]%) of the amount estimated by the *Consultant* for the *Owner* to complete and rectify the *Minor Deficiencies* (other than the *Interim Minor Deficiencies*). The *Consultant* shall inspect the completion of the *Minor Deficiencies* and shall provide a monthly progress report to the *Owner* describing the *Minor Deficiencies* which have been completed to the satisfaction of the *Consultant* and the *Owner* shall release from such holdback the amount of any holdback allocated to the *Minor Deficiencies* which have been completed. If, at any time after the one hundred and twenty (120) day period for completion of the *Minor Deficiencies*, any of the *Minor Deficiencies* are not completed within ten (10) *Working Days* of the *Contractor's* receipt of a written notice from the *Owner* to correct the deficient work or the *Contractor* is not diligently working towards completion of the deficient work to the *Consultant's* satisfaction, and unless the *Owner* otherwise agrees or the reasons for any delay are acceptable to the *Owner* or the delay is caused by the *Owner* or a person for whom the *Owner* is responsible at law or under the terms of the *Contract*, the *Owner* may engage others to perform the work necessary to complete and rectify the *Minor Deficiencies* at the risk and cost of the *Contractor* and the *Owner* may deduct such cost from the holdback amount or any other amount remaining owing by the *Owner* to the *Contractor*. If the cost of completion and rectification of any *Minor Deficiencies* exceeds the amount held back by the *Owner* then the *Contractor* shall reimburse the *Owner* for all such excess costs.

## **GC 5.8 FINAL PAYMENT**

- 5.8.1 When the *Contractor* considers that the *Work* is completed, the *Contractor* shall submit an application for final payment. The *Contractor's* application for final payment and release of finishing construction lien holdback, shall include the following documentation:
- .1 the *Contractor's* written request for release of holdback, including a declaration that no written notices of lien arising from the performance of the *Work* have been received by it;
  - .2 the *Contractor's* Statutory Declaration CCDC 9A;
  - .3 the *Contractor's* Workplace Safety and Insurance Board Certificate of Clearance; and
  - .4 the *Contractor's* written statement that the *Work* has been performed to the requirements of the *Contract Documents*, itemizing approved changes in the *Work*, the *Consultant's* written instructions and modifications required by authorities having jurisdiction.
- 5.8.2 The *Consultant* will, no later than ten (10) days after the receipt of an application from the *Contractor* for final payment, complete reviewing the *Work* to verify the validity of the application, and no later than the third (3<sup>rd</sup>) *Working Day* after completing the review, will notify the *Contractor* that the application is valid or give reasons why it is not valid.

5.8.3 When the *Consultant* finds the *Contractor's* application for final payment valid, the *Consultant* will issue a final certificate for payment.

5.8.4 Subject to the other requirements of the *Contract*, the unpaid balance of the *Guaranteed Price* shall become payable to the *Contractor* on the later of: (i) the second (2<sup>nd</sup>) *Business Day* following the expiration of all liens pursuant to the *Construction Lien Act* (Ontario), and (ii) the second (2<sup>nd</sup>) *Business Day* following the issuance of the *Consultant's* final certificate for payment, subject to the *Owner's* right under the *Contract* to withhold payment from the unpaid balance of the *Guaranteed Price* including for any amounts required pursuant to GC 5.9 WITHHOLDING PAYMENT and any sums required to satisfy any lien or trust claims arising from the *Work*.

#### **GC 5.9 WITHHOLDING OF PAYMENT**

5.9.1 If because of climatic or other conditions reasonably beyond the control of the *Contractor*, there are items of work that cannot be performed, payment in full for that portion of the *Work* which has been performed as certified by the *Consultant* shall not be withheld or delayed by the *Owner* on account thereof, but the *Owner* may withhold, until the remaining portion of the *Work* is finished, only such an amount that the *Consultant* determines is sufficient and reasonable to cover the cost of performing such remaining *Work*.

#### **GC 5.10 NON-CONFORMING WORK**

5.10.1 No payment by the *Owner* under the *Contract* nor partial or entire use or occupancy of the *Work* by the *Owner* shall constitute an acceptance of any portion of the *Work* or *Products* which are not in accordance with the requirements of the *Contract Documents*.

### **PART 6 CHANGES IN THE SCOPE OF THE WORK**

#### **GC 6.1 CHANGES**

6.1.1 The *Owner*, through the *Consultant*, without invalidating the *Contract*, may make *Changes in the Scope of the Work* consisting of additions, deletions, or other revisions to the *Work* by *Change Order* or *Change Directive*.

6.1.2 The *Contractor* shall not perform a *Change in the Scope of the Work* without a *Change Order* or a *Change Directive*. This requirement is of the essence and it is the express intention of the parties that any claims by the *Contractor* for a change in the *Guaranteed Price* and/or *Contract Time* shall be barred unless there has been strict compliance with the requirements of all PART 6 - CHANGES IN THE SCOPE OF THE WORK. No course of conduct or dealing between the parties, no express or implied acceptance of alterations or additions to the *Work* and no claims that the *Owner* has been unjustly enriched by any alteration or addition to the *Work*, whether in fact there is any such unjust enrichment or not, shall be the basis of a claim for additional payment under this *Contract* or a claim for any extension of the *Contract Time*.

6.1.3 *Supplemental Instructions* are subject to the provisions of the *Contract Documents* and will not result in a *Change Order* or a *Change Directive*. Any actions taken by the *Contractor* in response to such instructions are at the *Contractor's* risk and included in the *Guaranteed Price*.

6.1.4 The *Consultant* shall copy the *Lender* and the *Lender's Consultant* on all *Change Orders*, *Change Directives* and *Supplemental Instructions*.

#### **GC 6.2 CHANGE ORDER**

6.2.1 When a *Change in the Scope of the Work* is proposed or required, the *Consultant* shall provide a *Contemplated Change Notice* to the *Contractor*. Any adjustment to the *Guaranteed Price* or to the

*Contract Time* as a result of the proposed *Change in the Scope of the Work* shall be recorded in a *Change Order* in accordance with GC 6.2.2. If the proposed *Change in the Scope of the Work* is anticipated by the *Contractor* to result in an adjustment of the *Guaranteed Price*, the *Contractor* shall provide to the *Owner* and the *Consultant* a written explanation and details for the adjustment. Any adjustment to *Contract Time* shall only be to the extent that the critical path of the *Construction Schedule* is affected by the change to the *Work* and the *Contractor* shall not be entitled to claim any ownership of the *Schedule Cushion*.

6.2.2 When the *Owner* and the *Contractor* agree to the adjustments in the *Overhead and Profit Fee*, *Guaranteed Price* and *Contract Time* or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a *Change Order*, signed by the *Owner* and the *Contractor*. The value of the *Work* performed as the result of a *Change Order* shall be included in applications for progress payment as *Additional Owner Payments*.

6.2.3 The value of *Changes in the Scope of the Work* shall be determined by one of the following methods as selected by the *Owner*:

- .1 A lump sum amount (but excluding any amount on account of an increase to the *Cost of the Financing*) substantiated by an itemized cost breakdown acceptable to the *Consultant* and the *Owner* which lump sum shall be reasonable and consistent with market rates in the local market, if available, and if not available, in accordance with competitive market rates for such a project otherwise available at the time such *Work* is performed, and which will include an *Overhead and Profit Fee* applied in accordance with GC 6.2.4;
- .2 The aggregate of the *Cost* as defined herein and the *Overhead and Profit Fee* as applied in accordance with GC 6.2.4 all substantiated by an itemized cost breakdown acceptable to the *Owner* and the *Consultant* and may be initiated with a maximum change order amount at the option of the *Owner*. “*Cost*” shall be actual net cost to the *Contractor* excluding its overhead and profit, as agreed to by the *Owner* and the *Contractor* and as determined pursuant to the *Cost of the Work* provisions applicable to *Changes in the Scope of the Work* of GC 6.2.5, GC 6.2.6, GC 6.2.7 and GC 6.2.8 provided that all such actual costs must be reasonable, consistent with market rates in the local market, if available, and if not available, in accordance with competitive market rates for such a project otherwise available at the time such *Work* is performed and substantiated in full detail to the satisfaction of the *Consultant* and the *Owner*. Such *Costs* shall be subject to full and complete audit at all reasonable times by the representatives of the *Consultant* and the *Owner*. This method of determining the value of changes in the *Work* shall extend to *Subcontractors*, *Suppliers* and *Sub-Subcontractors* as applicable. *Subcontractor* and *Sub-Subcontractor* labour rates, labour productivity rates and discount and all material and trade rates and discounts applicable to changes shall be submitted to the *Owner* and, subject to the *Owner’s* approval prior to the execution of the applicable *Subcontractor* and *Sub-Subcontractor* contracts. The pricing of all materials and *Products* involved in changes shall be at the actual cost including discounts and not at manufacturer’s list or suggested retail prices.
- .3 Unit price as set out in the *Contract* or subsequently agreed upon, which shall include overhead, profit, and other reasonable charges of the *Contractor* which shall be the total cost to the *Owner*. Where applicable, adjustment to the *Guaranteed Price* shall be based on net quantity difference from original quantity.

6.2.4 *Overhead and Profit Fee*, as that term is referred to in GC 6.2.3.1 and GC 6.2.3.2, shall be a percentage of the *Cost* as defined in GC 6.2.3.2 and as listed below and shall include the *Contractor’s* and *Subcontractors’* overhead and profit. For clarity, the *Contractor* shall not charge any additional *Overhead and Profit Fee* on a *Subcontractor’s Overhead and Profit Fee*. Overhead means any cost incurred for maintaining a viable business, including but not limited to:

- .1 licensing required for conducting business in a jurisdiction;

- .2 salaries, wages, benefits for office personnel, general management, warehouse personnel, maintenance workers and other employees engaged in daily operations at the place of business;
- .3 general office expenses not related to an individual project, including but not limited to rent, leases, mortgages, financing costs including holdback, utilities, disposal charges and related services, telephone, light, power, water, utilities and heat;
- .4 leased or rented equipment, furniture and facilities not used on the *Project* site;
- .5 office supplies including but not limited to stationary, postage and other office supplies, equipment, computer hardware and software;
- .6 *Project* related office expenses including but not limited to: permits and/or licenses required by authorities having jurisdiction, phone, fax, internet, printing, courier charges, office equipment rentals, lodging and travel;
- .7 *Project* related site expenses including but not limited to: site/trailer office(s) and sheds, including cost of telephone, light, power, utilities, water and heat used therein, *Project* safety (hoarding, signage, bump lines, etc.), site security, fire prevention, snow removal, winter conditions, surveying, coordination of service disruption, *Project* signage, sanitary facilities, water, power, heat, temporary protection of areas adjacent to the *Work*, *As-Built Drawings* and maintenance manuals;
- .8 salaries, wages, benefits for *Project* manager, foreman and supervisor, *Project* superintendent, mechanical and electrical coordinator;
- .9 licenses, permits, certificates, fees and deposits except when these are special for a particular item of *Work*; and
- .10 printing charges for proposed changes, *Change Orders* and drawings for *Contractor's* and *Subcontractors'* use in the *Work*. (the *Consultant* will provide one (1) copy of change notice documentation and in the event of re-issue of full size drawings will provide one (1) reproducible and one (1) print).

At the *Contractor's* option, if the *Contract Time* is extended as a result of a *Change Order*, then the expenses referred to in GC 6.2.4.6, GC 6.2.4.7 and GC 6.2.4.8 for the extended period that are specifically related to the *Change Order* may be excluded from the *Overhead and Profit Fee* and included in the *Cost of the Work* in accordance with GC 6.2.6, and the applicable *Contractor's Overhead and Profit Fee* referred to in GC 6.2.5 shall be reduced by 20% and applied to the entire scope of the *Change Order*.

In addition, at the *Contractor's* option, if an extension of the *Contract Time* would have occurred but for the utilization of additional resources by the *Contractor* which may include premium time and overtime, then the expenses referred to in GC 6.2.4.6, GC 6.2.4.7 and GC 6.2.4.8 that are specifically related to the additional resources utilized by the *Contractor* may be excluded from the *Overhead and Profit Fee* and included in the *Cost of the Work* in accordance with GC 6.2.6, and the applicable *Contractor's Overhead and Profit Fee* referred to in GC 6.2.5 shall be reduced by [REDACTED]% and applied to the entire scope of the *Change Order*. The determination of whether the utilization of additional resources by the *Contractor* did avoid an extension of the *Contract Time* shall, subject to the provisions of Part 8 – DISPUTE RESOLUTION, be determined by the *Consultant* based on the impact of such utilization of additional resources on the critical path of the *Construction Schedule*.

- 6.2.5 In determining the value of *Scope Changes* the *Owner* will be permitted to aggregate only the value of *Changes in the Scope of the Work* that arise out of *Owner* initiated *Change Orders* which relate to the same category, location or component of *Work*.

On Scope Changes having a value of \$[REDACTED] or less:

The *Contractor's Overhead and Profit Fee* on changes will be permitted as follows:

- .1 Within the scope of the *Contractor's* own work force, the *Overhead and Profit Fee* shall not be more than [REDACTED] ([REDACTED]%) of that portion of the *Cost* performed by the *Contractor's* own workforce.
- .2 The *Contractor's* total *Overhead and Profit Fee* for work performed by a *Subcontractor* shall not be more than [REDACTED] ([REDACTED]%) of that portion of the *Cost* performed by the *Subcontractor*.

The *Subcontractor's Overhead and Profit Fee* on changes will be permitted as follows:

- .3 Within the scope of the *Subcontractor's* own work force, the *Overhead and Profit Fee* shall not be more than [REDACTED] ([REDACTED]%) of that portion of the *Cost* performed by the *Subcontractor's* own workforce.
- .4 The *Subcontractor* total *Overhead and Profit Fee* for the work performed by a *Sub-Subcontractor* shall not be more than [REDACTED] ([REDACTED]%) of that portion of the *Cost* performed by the *Sub-Subcontractor*.
- .5 No *Overhead and Profit Fee* on credits will be permitted.

On Scope Changes having a value of \$[REDACTED] to \$[REDACTED]:

The *Contractor's Overhead and Profit Fee* on changes will be permitted as follows:

- .6 Within the scope of the *Contractor's* own work force, the *Overhead and Profit Fee* shall not be more than [REDACTED] ([REDACTED]%) of that portion of the *Cost* performed by the *Contractor's* own workforce.
- .7 The *Contractor's* total *Overhead and Profit Fee* for work performed by a *Subcontractor* shall not be more than [REDACTED] ([REDACTED]%) of that portion of the *Cost* performed by the *Subcontractor*.

The *Subcontractor's Overhead and Profit Fee* on changes will be permitted as follows:

- .8 Within the scope of the *Subcontractor's* own work force, the *Overhead and Profit Fee* shall not be more than [REDACTED] ([REDACTED]%) of that portion of the *Cost* performed by the *Subcontractor's* own workforce.
- .9 The *Subcontractor* total *Overhead and Profit Fee* for the work performed by a *Sub-Subcontractor* shall not be more than [REDACTED] ([REDACTED]%) of that portion of the *Cost* performed by the *Sub-Subcontractor*.
- .10 No *Overhead and Profit Fee* on credits will be permitted.

On Scope Changes having a value of \$[REDACTED] to \$[REDACTED]:

The *Contractor's Overhead and Profit Fee* on changes will be permitted as follows:

- .11 Within the scope of the *Contractor's* own work force, the *Overhead and Profit Fee* shall not be more than [REDACTED] ([REDACTED]%) of that portion of the *Cost* performed by the *Contractor's* own workforce.

- .12 The *Contractor's* total *Overhead and Profit Fee* for work performed by a *Subcontractor* shall not be more than [REDACTED] ([REDACTED]%) of that portion of the *Cost* performed by the *Subcontractor*.

The *Subcontractor's Overhead and Profit Fee* on changes will be permitted as follows:

- .13 Within the scope of the *Subcontractor's* own work force, the *Overhead and Profit Fee* shall not be more than [REDACTED] ([REDACTED]%) of that portion of the *Cost* performed by the *Subcontractor's* own workforce.
- .14 The *Subcontractor* total *Overhead and Profit Fee* for the work performed by a *Sub-Subcontractor* shall not be more than [REDACTED] ([REDACTED]%) of that portion of the *Cost* performed by the *Sub-Subcontractor*.
- .15 No *Overhead and Profit Fee* on credits will be permitted.

On *Scope Changes* having a value of \$[REDACTED] and over:

The *Contractor's Overhead and Profit Fee* on changes will be permitted as follows:

- .16 Within the scope of the *Contractor's* own work force, the *Overhead and Profit Fee* shall not be more than [REDACTED] ([REDACTED]%) of that portion of the *Cost* performed by the *Contractor's* own workforce.
- .17 The *Contractor's* total *Overhead and Profit Fee* up for work performed by a *Subcontractor* shall not be more than [REDACTED] ([REDACTED]%) of that portion of the *Cost* performed by the *Subcontractor*.

The *Subcontractor's Overhead and Profit Fee* on changes will be permitted as follows:

- .18 Within the scope of the *Subcontractor's* own work force, the *Overhead and Profit Fee* shall not be more than [REDACTED] ([REDACTED]%) of that portion of the *Cost* performed by the *Subcontractor's* own workforce.
- .19 The *Subcontractor's* total *Overhead and Profit Fee* for the work performed by a *Sub-Subcontractor* shall not be more than [REDACTED] ([REDACTED]%) of that portion of the *Cost* performed by the *Sub-Subcontractor*.
- .20 No *Overhead and Profit Fee* on credits will be permitted.

6.2.6 For the purposes only of determining the value of *Changes in the Scope of the Work* under GC 6.2.3.2, the *Cost of the Work*, which excludes *Value Added Taxes* shall mean the actual costs, without mark-up or the *Contractor* assessments, as necessarily incurred by the *Contractor* in the performance of a *Change in the Scope of the Work* and shall be restricted to the following:

- .1 wages and benefits paid for labour in the direct employ of the *Contractor* under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the *Owner* and the *Contractor*;
- .2 salaries, wages and benefits of the *Contractor's* personnel, when stationed at the field office, in whatever capacity employed; or personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment excluding the costs identified in GC 6.2.4.2 and GC 6.2.4.8;
- .3 [INTENTIONALLY DELETED];



- .4 contributions, assessments or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the *Contractor* and included in the *Cost of the Work* as provided in GC 6.2.6.1 and GC 6.2.6.2;
- .5 **[INTENTIONALLY DELETED];**
- .6 the cost of all *Products* including cost of transportation thereof;
- .7 **[INTENTIONALLY DELETED];**
- .8 **[INTENTIONALLY DELETED];**
- .9 **[INTENTIONALLY DELETED];**
- .10 **[INTENTIONALLY DELETED];**
- .11 the net amounts of all payments paid to *Subcontractors* and *Suppliers* in accordance with agreed to charge out rates after deduction of any back-charges, set offs or other similar charges but excluding costs to the *Contractor* that result from any *Subcontractor's* or *Supplier's* insolvency or failure to perform;
- .12 the cost of quality assurance such as independent inspection and testing services except for any such cost excluded under GC 6.2.8.19;
- .13 charges levied by authorities having jurisdiction at the *Place of the Work*;
- .14 royalties, patent license fees, and damages for infringement of patents and cost of defending suits therefor subject always to the *Contractor's* obligations to indemnify the *Owner* as provided in GC 10.3.1 of GC 10.3 – PATENT FEES;
- .15 incremental premiums, if any, for all bonds and insurance in relation to the performance of the *Work*;
- .16 all taxes, other than *Value Added Taxes*, and duties for which the *Contractor* is liable in relation to the performance of the *Work*;
- .17 **[INTENTIONALLY DELETED];**
- .18 charges for long distance telephone and facsimile communications, courier services, expressage, photocopying, reproduction of *Contract Documents*, and petty cash items incurred in relation to the performance of the *Work*;
- .19 the cost of removal and disposal of waste products and debris;
- .20 costs incurred due to emergencies affecting the safety of persons or property;
- .21 **[INTENTIONALLY DELETED];**
- .22 **[INTENTIONALLY DELETED];**
- .23 **[INTENTIONALLY DELETED];**
- .24 **[INTENTIONALLY DELETED];**

- .25 the cost of removal or containment of toxic or hazardous substances;
- .26 where there is a reduction in the construction scope of the *Work*, demobilization costs and costs incurred for cancellation or reduction of *Subcontractor* or *Supplier* contracts entered into on an arms length basis; and
- .27 any other cost to the *Contractor* expressly or properly inferable from any provision of the *Contract*.

6.2.7 Discounts, rebates and refunds

- .1 All cash discounts shall accrue to the *Contractor* unless the *Owner* deposits funds with the *Contractor* with which to make payments, or where the *Owner* pays the costs of financing the *Work*, in which case the cash discounts shall accrue to the *Owner*. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment applicable to the *Work* shall accrue to the *Owner*, and the *Contractor* shall make provisions so that they can be secured.

6.2.8 The following costs shall not be reimbursed or otherwise included in the *Cost of the Work* in connection with any *Change Order* or *Change Directive* and are deemed to be included in the *Overhead and Profit Fee*:

- .1 any cost not specifically and expressly described in GC 6.2.6;
- .2 overhead, profit and general expenses;
- .3 the *Contractor's* capital expenses, including interest on the *Contractor's* capital employed in the *Work*;
- .4 costs due to the fault or negligence of the *Contractor*, *Subcontractors*, *Sub-Subcontractors* and *Suppliers* and anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to, costs for the correction of damaged, defective or non-conforming work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the *Work*;
- .5 losses or costs chargeable to any *Subcontractor* or *Supplier* pursuant to its subcontract;
- .6 fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal due, in whole or in part, to the action or inaction of the *Contractor*, any *Subcontractor*, any *Sub-Subcontractor*, any *Supplier* or any person for whom they are responsible in law;
- .7 costs associated with the *Contractor's* failure to obtain any and all permits in a timely manner including, without limitation, the costs of any delays resulting therefrom, unless such failure is due to the failure of the *Contract* drawings and specifications to conform with the laws and regulations applicable thereto or unless such failure is directly and solely attributable to the delay of the *Owner*;
- .8 costs of accelerating the *Work* in accordance with GC 6.5.9;
- .9 costs resulting from the failure of the *Contractor* or any *Subcontractor* or *Sub-Subcontractor* to procure and maintain insurance as required by the *Contract Documents*;
- .10 overtime and premium time required under GC 6.5.9;
- .11 *Project* incentive bonuses except as approved in advance in writing by the *Owner*;

- .12 costs (including legal fees and expenses) of bonding, securing or removing liens or defending claims filed by *Subcontractors*, *Suppliers* or *Sub-Subcontractors* arising directly from a default by the *Contractor* in properly making any payment in connection with the *Work*, unless such default by the *Contractor* is due to the wrongful failure by the *Owner* to make a progress payment to the *Contractor*;
  - .13 any fines levied against the *Contractor* or the *Owner* due to the *Contractor's* (or any *Subcontractor's* or *Sub-Subcontractor's*) violations of any regulations or other federal, provincial or local laws, regulations or ordinances which fines shall be paid by the *Contractor*, the *Contractor* hereby indemnifying, defending and agreeing to hold harmless the *Owner*, the *Consultant*, the *Owner's Project Manager* and the Ontario Infrastructure Projects Corporation, their consultants, directors, officers, agents, employees, successors and assigns as well as her Majesty the Queen in right of Ontario, her ministers, agents and employees or any person for whom they are in law responsible, from and against any loss, costs, expense or damage arising out of any such violation or fine;
  - .14 losses or expenses for which the *Contractor* is compensated by insurance;
  - .15 salaries or other compensation (including without limitation, salaries of the *Contractor's* officers and employee's benefits) of any employee of the *Contractor* (or related companies) not working on matters relating to the *Project* except as agreed to in writing by the *Owner*;
  - .16 expenses of the *Contractor's* head and district offices other than the field office except as agreed to in writing by the *Owner*;
  - .17 salaries and other compensation of the *Contractor's* personnel stationed at the *Contractor's* principal office or offices other than the field office;
  - .18 cost of all deductibles arising out of the misconduct, fault, negligent act or omissions of the *Contractor*, any *Subcontractor*, any *Supplier* or any *Sub-Subcontractor* or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
  - .19 costs for re-inspections and re-testings of non-conforming *Work* not carried out in accordance with the *Contract Documents*;
  - .20 legal costs, incurred by the *Contractor*, in relation to the performance of the *Work*; and
  - .21 all taxes on income, capital or real property of the *Contractor*.
- 6.2.9 For greater certainty, any charges or back charges as collected and if collected by the *Contractor* from any of its *Subcontractors* or *Suppliers* including for equipment rentals, hoisting, clean up costs or any other expenses for which the *Contractor* is otherwise entitled to reimbursement pursuant to GC 6.2.6 shall be credited to and thereby reduce the *Cost of the Work* in connection with any *Change Order* or *Change Directive*.
- 6.2.10 If there is an increase or a decrease in the *Cost of the Financing* as a result of a *Change Order*, the *Guaranteed Price* shall be increased or decreased by the increase or decrease to the *Cost of the Financing* and shall be paid at such time or times when the cost or benefit resulting in such increase or decrease is incurred or realized. The *Contractor* shall provide the calculation of the increase or decrease in the *Cost of the Financing* together with a certificate of the *Lender* verifying such calculation. Where the increase in the *Cost of the Financing* includes breakage costs, but the impact of the *Change Order* on the *Cost of the Financing* could also be accommodated without incurring breakage costs, calculations for both options shall be provided to the *Owner* together with a certificate of the *Lender* addressed to *Project Co* (which will expressly provide that the certificate may be relied upon by *Hospital*) verifying such calculations. The *Owner* shall, in its sole and absolute discretion, within five (5) *Business Days* of

receiving such certificate from *Lender* select under which option to proceed with by written notice to *Project Co, Contractor* and the *Lender*. The *Owner* may, in its sole and absolute discretion, elect to apply any portion of the *Schedule Cushion* to any extension of *Contract Time* otherwise determined under a *Change Order* with the result that such extension of *Contract Time* shall be reduced or eliminated as the case may be by the number of days of the *Schedule Cushion* the *Owner* has elected to apply and the determination of the increase in the *Cost of the Financing* associated with such *Change Order* shall be recalculated based on the remaining extension of *Contract Time*, if any, under such *Change Order* after such application by the *Owner* of *Schedule Cushion*. If a *Change Order* gives rise to a net benefit to the *Contractor* through a reduction of the *Cost of the Financing*, then the *Contractor* shall pay any such net benefit received by the *Contractor* to the *Owner*.

### **GC 6.3 CHANGE DIRECTIVE**

- 6.3.1 If the *Owner* requires the *Contractor* to proceed with a *Change in the Scope of the Work* prior to the *Owner* and the *Contractor* agreeing upon the adjustment in the *Guaranteed Price* and in the *Contract Time*, the *Owner*, through the *Consultant*, shall issue a *Change Directive*.
- 6.3.2 A *Change Directive* can only be used by the *Owner* to direct a *Change in the Scope of the Work* which is within the general scope of the *Contract Documents*.
- 6.3.3 Upon receipt of a *Change Directive*, the *Contractor* shall proceed promptly with the *Change in the Scope of the Work*, in which case any adjustment to the *Guaranteed Price* shall be determined on the basis set forth in GC 6.2.3.2 having regard to GC 6.2.4.
- 6.3.4 Pending determination of the *Overhead and Profit Fee*, the adjustment to the *Guaranteed Price* and to the *Contract Time* required as a result of a *Change Directive*, the *Cost* of the *Work* incurred (determined on the basis of the "*Cost*" as set out in GC 6.2.3.2) as the result of a *Change Directive* is eligible to be included in the *Additional Owner Payments*, notwithstanding the limit imposed by the *Guaranteed Price*. Costs to complete the *Work* authorized by the *Change Directive*, including all labour and materials, shall be authorized by the *Owner* daily or every other day.
- 6.3.5 If the *Owner* and the *Contractor* do not agree on the proposed *Overhead and Profit Fee*, the proposed adjustment in the *Guaranteed Price*, in the *Contract Time*, or in the method of determining them, the adjustment shall be referred to the *Consultant* for determination on the same basis as a *Change Order* and shall be recorded in a *Change Order*.
- 6.3.6 If at any time after the start of the *Work* directed by a *Change Directive*, the *Owner* and the *Contractor* reach agreement on the *Overhead and Profit Fee*, on the adjustment to the *Guaranteed Price* and to the *Contract Time*, this agreement shall be recorded in a *Change Order* signed by *Owner* and the *Contractor*.
- 6.3.7 Following the start of the *Work* directed by a *Change Directive*, the *Contractor* will maintain in accordance with industry standard records to support the *Cost of the Work* under GC 6.2.6 in respect of the *Work* under the *Change Directive*.

### **GC 6.4 CONCEALED, UNKNOWN CONDITIONS**

- 6.4.1 In the event that the *Contractor* encounters conditions at the *Place of the Work* which are not described in or are not properly inferable or readily apparent from the documentation included in the *Additional Site Information* or would not have been readily apparent from the *Contractor's* inspections of the *Place of the Work* made under the *Request for Proposals* prior to the date of the *RFP Submission*, the *Contractor* will promptly notify the *Consultant* who will promptly investigate such conditions and who will then report to the *Owner* and the *Contractor* with a finding as to whether such conditions were or were not described in or were or were not properly inferable or readily apparent from the documentation included in the *Additional Site Information* or would or would not have been readily apparent from the *Contractor's*

inspections of the *Place of the Work* made under the *Request for Proposals* prior to the date of the *RFP Submission*.

- 6.4.2 If the conditions were described in or were properly inferable or readily apparent from the documentation included in the *Additional Site Information* or would have been readily apparent from the *Contractor's* inspections of the *Place of the Work* made under the *Request for Proposals* prior to the date of the *RFP Submission*, then the *Contractor* shall not be entitled to any adjustment in the *Guaranteed Price* or in *Contract Time*.
- 6.4.3 If the conditions were not described in or were not properly inferable or readily apparent from the documentation included in the *Additional Site Information* or would not have been readily apparent from the *Contractor's* inspections of the *Place of the Work* made under the *Request for Proposals* prior to the date of the *RFP Submission* and the conditions justify an increase in the *Guaranteed Price* or an extension of *Contract Time*, or both, the *Consultant* shall issue appropriate instructions for a *Change in the Scope of the Work* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.

## **GC 6.5 DELAYS**

- 6.5.1 In accordance with paragraph 11.1 of Article A-11 of the Agreement – INTERPRETATION AND OTHER MATTERS, the *Contractor* acknowledges and agrees that time is of the essence with respect to *Work* and with respect to the *Contract* as a whole.
- 6.5.2 If the *Contractor* is delayed in the performance of the *Work* (and only to the extent that such delay affects the critical path of the *Construction Schedule*) by:
- .1 acts or omissions of the *Owner*, the *Consultant*, the *Owner's* other consultants or contractors or anyone employed or engaged by them, directly or indirectly, or anyone for whose acts they may be liable, but excluding acts or omissions which are permitted or contemplated by the provisions of the *Contract*;
  - .2 a stop work order issued by a Court or other public authority and providing that such order was not issued as a result of the *Contractor* not performing its obligations under this *Contract* including where such non-performance is caused by anyone employed or engaged by the *Contractor* directly or indirectly including, without limitation, a *Subcontractor*, *Supplier* or *Sub-Subcontractor*;
  - .3 a direction from the *Owner* to the *Contractor* to suspend the performance of the *Work* or a portion thereof as a result of a public health issue arising in connection with or affecting the *Hospital*; or
  - .4 labour disputes, strikes or lockouts of the *Owner* or resulting from the incompatibility of the labour affiliation, or lack thereof, of any contractor engaged by the *Owner* or the *Owner's* own forces with other labour employed by the *Contractor* or its *Subcontractors*, *Sub-Subcontractors* or *Suppliers*, unless such labour dispute, strike or lock-out resulted from the *Contractor* not performing its obligations under this *Contract* including where such non-performance is caused by anyone employed or engaged by the *Contractor* directly or indirectly including, without limitation, a *Subcontractor*, *Supplier* or *Sub-Subcontractor*;

the *Contract Time* will be extended for such reasonable time as the *Consultant* will recommend in consultation with the *Owner* and the *Contractor* and the *Contractor* will be reimbursed by the *Owner* for the *Cost* (as defined in GC 6.2.3.2) incurred by the *Contractor* as a result of the delay, and such extension of the *Contract Time* and reimbursement of *Cost* shall be valued and processed as a *Change Order* in accordance with the *Change Order* procedure pursuant to GC 6.2 – CHANGE ORDER hereof.

- 6.5.3 If the *Contractor* is delayed in the performance of the *Work* (and only to the extent that such delay affects the critical path of the *Construction Schedule*) by a lack of access to the *Place of the Work* as a result of an order or direction issued by the *Owner* or by a government authority to the *Owner*, but not as a result of the *Contractor* not performing its obligations under this *Contract* including where such non-performance is caused by anyone employed or engaged by the *Contractor* directly or indirectly including, without limitation, a *Subcontractor*, *Supplier* or *Sub-Subcontractor* or by any activity described in GC 6.5.4, the *Contract Time* will be extended for such reasonable time as the *Consultant* will recommend in consultation with the *Owner* and the *Contractor* and the *Contractor* will be reimbursed by the *Owner* for the *Cost* (as defined in GC 6.2.3.2) incurred by the *Contractor* as a result of the delay, and such extension of the *Contract Time* and reimbursement of *Cost* shall be valued and processed as a *Change Order* in accordance with the *Change Order* procedure pursuant to GC 6.2 – CHANGE ORDER hereof. The *Contractor* acknowledges that in performing the *Work* at all times paramountcy of access must be given to emergency vehicles and no claim may be made by the *Contractor* for any delay in the performance of the *Work* as a result of any temporary lack of access to the *Place of Work* resulting from this paramountcy of access by emergency vehicles, provided that the *Owner* will use reasonable efforts to avoid and to limit the duration of any temporary lack of access for this reason.
- 6.5.4 If the *Contractor* is delayed in the performance of the *Work* by civil commotion, warlike operation, invasion, rebellion, hostilities, military or usurped power, acts of God, labour disputes, strikes or lock outs (including lock-outs decreed or recommended for its members by a recognized contractors' association of which the *Contractor* is a member or to which the *Contractor* is otherwise bound), fire, unusual delay by common carriers or unavoidable casualties or, without limit to any of the foregoing, by a cause beyond the *Contractor's* control (but excluding any delay due to: (i) labour disputes involving only the forces of the *Contractor* or any *Subcontractor* or *Sub-Subcontractor* or labour disputes provided for in GC 6.5.2.4, (ii) lack of funds, (iii) the fault or negligence of the *Contractor* or anyone employed or engaged directly or indirectly by the *Contractor*, including any *Supplier*, *Subcontractor* or *Sub-Subcontractor*, (iv) any shortage of labour, equipment or materials unless such shortage is due to an event which gives rise to relief under this GC 6.5.4, (v) the default, delay or failure of any *Supplier*, *Subcontractor* or *Sub-Subcontractor* unless such default, delay or failure is due to an event which would give rise to relief under this GC 6.5.4 if the *Supplier*, *Subcontractor* or *Sub-Subcontractor* was a party to the *Contract* or (vi) any weather (extreme or unusual) encountered in the course of completing the *Work*), then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may decide in consultation with the *Contractor* and the *Owner*, and such extension of the *Contract Time* shall be processed as a *Change Order* in accordance with the *Change Order* procedure pursuant to GC 6.2 – CHANGE ORDER hereof. The *Contractor* shall not be entitled to payment for costs incurred as the result of any delays described in this GC 6.5.4 and there shall be no adjustment to the *Guaranteed Price* save and except for an increase in the *Cost of the Financing* under GC 6.2.10 and where there is a claim against any insurance carried under the *Contract* under which insurance proceeds to cover the cost of a delay are payable. The *Contractor* shall use reasonable efforts to minimize the effect of delays described in this GC 6.5.4 upon the performance of the *Work* and *Contract Time*. The *Contractor* agrees that labour disputes, strikes and lockouts involving *Suppliers*, which are not directed specifically at the *Work*, and which do not lead to picketing at the *Place of the Work*, shall not constitute grounds for delay of the *Work* if other suppliers of materials or services acceptable to the *Consultant* are available on commercially reasonable terms.
- 6.5.5 Should the *Contractor* contend that it is entitled to an extension of the *Contract Time* for completion of any portion of the *Work*, the *Contractor* shall:
- .1 as soon as reasonably possible but in any event within fifteen (15) days of the occurrence of the delay, provide the *Owner* with written notice setting forth the cause of the delay, a description of the impact the delay will have on the critical path of the *Work* (including an order of magnitude estimate of the cost of the delay) and a description of the portions of the *Work* affected thereby, together with all pertinent details;
  - .2 as soon as reasonably possible but in any event within fifteen (15) days after the cause of the delay has ceased to exist, submit a written application to the *Owner* for the specific *Contract Time* extension requested, and if the delay is as a result of an event described in GC 6.5.2, GC 6.5.3 or

GC 6.5.7, together with a breakdown of the actual costs, without mark-up, incurred by the *Contractor* as a result of the delay;

- .3 take all reasonable steps to mitigate the consequences of such an event (that could result in delays) upon the performance of its obligations under this *Contract*, resume performance of all its obligations affected by the delay event as soon as practicable and use all reasonable endeavours to remedy any failure to perform; and
- .4 use all reasonable efforts to anticipate the occurrence of any delay event and take appropriate measures to avoid its potential occurrence or minimize the potential effects of its occurrence.

6.5.6 The *Contractor* acknowledges that the provisions of GC 6.5.5.1 and GC 6.5.5.2 are required by the *Owner* to ensure the *Owner* is provided with timely and sufficient information respecting any alleged delay to ensure that the *Owner* is not prejudiced in dealing with the claim by the *Contractor* for an extension of *Contract Time* or an increase to the *Guaranteed Price* as a consequence of the occurrence of the delay. If the *Contractor* fails to comply with the requirement to provide the information under either GC 6.5.5.1 or GC 6.5.5.2 within the time periods therein provided, it shall be disentitled to claim an extension to the *Contract Time* and payment of additional costs but only to the extent that the *Owner* has been prejudiced by the failure. The onus shall be on the *Contractor* to establish substantial compliance with the said requirements, and that the *Owner* has not been prejudiced by the failure to provide the required information within the required time periods.

6.5.7 The *Owner* may order the *Contractor* in writing to suspend or interrupt all or any part of the *Work* for such period of time as the *Owner* may determine as to be appropriate for the convenience of the *Owner*. This right of the *Owner* to suspend or interrupt the *Work* shall not give rise to any duty on the part of the *Owner* to exercise this right for the benefit of the *Contractor* or any other person or entity. In the event of an *Owner* ordered suspension of the *Work* not resulting from the *Contractor* not performing its obligations under this *Contract* including where such non-performance is caused by anyone employed or engaged by the *Contractor* directly or indirectly including, without limitation, a *Subcontractor*, *Supplier* or *Sub-Subcontractor*, the *Contract Time* will be extended for such reasonable time as the *Consultant* will recommend in consultation with the *Owner* and the *Contractor* and the *Contractor* will be reimbursed by the *Owner* for the *Cost* (as defined in GC 6.2.3.2) incurred by the *Contractor* as a result of the suspension of the *Work*, and such extension of the *Contract Time* and reimbursement of *Cost* shall be valued and processed as a *Change Order* in accordance with the *Change Order* procedure pursuant to GC 6.2 – CHANGE ORDER hereof. The *Consultant* is not authorized to order a suspension of the *Work*. The *Work* shall only be suspended by written notice from the *Owner* to the *Contractor*.

6.5.8 Should the *Work* be stopped for any cause, the *Contractor* shall provide protection for any part of the *Work* likely to become damaged during the *Work* stoppage. The *Owner* shall pay the costs for such protection only if stoppage occurs due to delays as specified in GC 6.5.2, GC 6.5.3 and GC 6.5.7.

6.5.9 If the *Work* should be behind schedule for a reason other than as described in GC 6.5.2, GC 6.5.3, GC 6.5.4 or GC 6.5.7, or if any of the *Subcontractors*, *Suppliers* or *Sub-Subcontractors* delays the progress of any portion of the *Work* necessary to complete the *Work* on schedule, the *Contractor* shall use all reasonable measures to bring the *Work* back on schedule. The *Contractor* shall exercise all means within its discretion, such as directing any *Subcontractors*, *Suppliers* or *Sub-Subcontractors* creating delays to increase their labour forces and equipment, to improve the organization and expediting of the *Work*, or to work overtime as may be necessary. The *Contractor* shall provide any additional supervision, co-ordination and expediting, including overtime by its own personnel as may be required to achieve this end. The costs and expenses incurred by the use of such measures and overtime shall be borne by the *Contractor* and/or its *Subcontractors*, *Suppliers* or *Sub-Subcontractors* and there shall be no adjustment in the *Guaranteed Price* of the *Work* as a result of such costs and expense.

6.5.10 *Costs* (as defined in GC 6.2.3.2) due to delays caused by non-availability of specified items, when such delays could have been avoided or substantially mitigated by the *Contractor*, shall be the responsibility of the *Contractor*.

- 6.5.11 The cost which the *Contractor* may be entitled to under GC 6.5.2, GC 6.5.3, or GC 6.5.7 shall extend to all direct costs incurred or suffered by the *Contractor* as a result of the delay including the *Overhead and Profit Fee* in an amount determined in accordance with GC 6.2.5 and by the increase to the *Cost of the Financing* in accordance with GC 6.2.10, but shall not include indirect, consequential or special damages such as loss of profit or loss of opportunity arising from the delay.
- 6.5.12 Where there are concurrent delays or impacts, some of which are caused by the *Owner* or by others for whom the *Owner* is responsible and some of which are caused by the *Contractor* or others for whom the *Contractor* is responsible, the *Contractor* shall not be entitled to either an extension in the *Contract Time* or additional compensation to the extent of the concurrent delays or impacts. Concurring delays or impacts are those that are caused by two or more independent events which affect items on the critical path of the *Construction Schedule* where the time period over which such delays or impacts occur overlap in time, but only for the duration of the overlap.
- 6.5.13 The *Contractor* acknowledges that, subject to any extension of the *Contract Time* that may arise in connection with the *Consultant's* failure to respond to any *Design Issue* in accordance with GC 2.2.9 as it applies to the circumstances of either of GC 4.2.3 or GC 4.2.4 or if there is any extension of *Contract Time* allowed in the circumstance of a *Change in the Scope of the Work* under GC 4.2.6, no extension of time shall be made for delays caused by a *Design Issue* properly characterized as a *Contractor's Design Contingency* matter under GC 4.2 – CONTRACTOR'S DESIGN CONTINGENCY of this *Contract*.
- 6.5.14 The *Owner* shall provide the *Contractor* with reasonable access to and use of the *Place of the Work* sufficient to allow the *Contractor* to perform the *Work* and in a manner consistent with the *Construction Schedule* subject to and in accordance with the notification requirements and restrictions set out in the *Contract Documents* including those *Contract Documents* referred to in GC 3.12.5; provided that the *Contractor* agrees that the inability of the *Owner* to provide the *Contractor* with access to an area for construction activities not on the critical path for reasons generally outlined in GC 3.12.4 and GC 3.12.5 will not result in a claim by the *Contractor* for a change in the *Guaranteed Price* or *Contract Time*.
- 6.5.15 The *Contractor* acknowledges and agrees that the *Contract Time* includes a *Schedule Cushion* in the *Construction Schedule* at no additional cost to the *Owner*. The *Contractor* shall separately identify the extent of the *Schedule Cushion* in the *Construction Schedule*.
- 6.5.16 The *Contractor* acknowledges and agrees that in the event that an extension of the *Contract Time* is allowed under any provision of this *Contract*, the *Owner* may, in its sole and absolute discretion, elect to apply any portion of the *Schedule Cushion* with the result that such extension of *Contract Time* shall be reduced or eliminated as the case may be by the number of days of the *Schedule Cushion* the *Owner* has elected to apply.
- 6.5.17 For greater certainty, no extension of the *Contract Time* resulting from a delay under any provision of this GC 6.5 shall be allowed, unless the event or circumstance on which the claim is based extends the critical path of the *Construction Schedule* or the attainment of any of the *Phased Occupancy Dates*, the date for *Completion of the Interim Work*, the date for *Substantial Performance of the Work* or the date for *Total Completion* and in no case shall the extension of *Contract Time* be more than the necessary extension of the critical path as a result of the event causing the delay.

## **PART 7 DEFAULT NOTICE**

### **GC 7.1 OWNER'S RIGHT TO PERFORM THE WORK, SUSPEND THE WORK OR TERMINATE THE CONTRACT**

- 7.1.1 If the *Contractor* should be adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Contractor's* insolvency, or if a receiver is appointed because of the *Contractor's* insolvency, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, by



giving the *Contractor* or receiver or trustee in bankruptcy notice in writing, terminate the *Contract* without affecting in any respect the liability of the *Contractor* in respect of earlier defaults.

7.1.2 If the *Contractor* should neglect to prosecute the *Work* in compliance with the requirements of the *Contract*, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, notify the *Contractor* in writing that the *Contractor* is in default of the *Contractor's* contractual obligations and instruct the *Contractor* to correct the default in the five (5) *Working Days* immediately following the receipt of such notice.

7.1.3 If the default cannot be corrected in the five (5) *Working Days* specified, the *Contractor* shall be in compliance with the *Owner's* instructions if the *Contractor*:

- .1 commences and is diligently proceeding with the correction of the default within the specified time,
- .2 provides the *Owner* with a schedule acceptable to the *Owner* for such correction, and
- .3 corrects the default in accordance with such schedule.

If the *Contractor* fails to correct the default in the time specified in the schedule referred to in GC 7.1.3.2 or subsequently agreed upon, the *Owner* may correct such default and deduct the cost and expense thereof from any payment then or thereafter due the *Contractor* provided the *Consultant* has certified such cost to the *Owner* and the *Contractor*.

7.1.4 The *Owner* may terminate the *Contract* if the *Contractor*:

- .1 fails to deliver a schedule for correction of the default of the *Contractor* to the *Owner* in accordance with GC 7.1.3.2 that is acceptable to the *Owner*, acting reasonably, that indicates *Substantial Performance of the Work* will be achieved by the *Longstop Date*; or
- .2 subject to GC 6.5.2, GC 6.5.3, GC 6.5.4 and GC 6.5.7 fails to achieve *Substantial Performance of the Work* by the *Longstop Date*.

7.1.5 If the *Owner* terminates the *Contract* pursuant to GC 7.1.1 or GC 7.1.4, the *Owner* shall be entitled to take possession of the *Work* and *Products*, utilize the construction machinery and equipment (subject to the rights of third parties and to payment of reasonable rental fees in respect of construction machinery and equipment owned by the *Contractor*) and finish the *Work* by whatever method the *Owner* may consider expedient.

7.1.6 In the event of a termination as provided for pursuant to the *Contract Documents*, the *Contractor* shall cooperate with the *Owner* and turn over to the *Owner*, copies of the *Contractor's* records, documentation and drawings necessary for the *Owner* to proceed with the *Work*, including the legal assignment to the *Owner* of any of the *Contractor's* rights in any agreement relating to the *Work*, as the *Owner* may require, and the *Contractor* shall not do anything to impede the *Owner's* ability to proceed with the *Work*. Further, the *Contractor* agrees to turn over to the *Owner*, on a timely basis enabling the *Contractor* to make and retain copies as it may reasonably deem necessary, all of the *Contractor's* records, files, documents, materials, drawings, and any other items relating to the *Project*, whether located on the *Place of the Work*, at the *Contractor's* office or elsewhere (including, without limitation, all records as described in GC 5.2.1 and notwithstanding the fact that such provision only permits access by the *Owner* to such records) and to vacate the *Place of the Work* in accordance with the *Owner's* reasonable instructions. The *Owner* may retain such records, files, documents, materials, drawings and any other items for such time as it may need them and may reproduce any and all such items for its own use.

7.1.7 The *Contractor's* obligation under the *Contract* as to quality, correction and warranty of the *Work* performed by the *Contractor* up to the time of termination shall continue in force after such termination.

7.1.8 If all or substantially all of the *Work* should be stopped or otherwise delayed for a continuous period of one hundred and eighty (180) days or more (or if the *Owner* reasonably believes that such a delay is reasonably likely to occur) as a result of the occurrence of any one or more of the events described in GC 6.5.2.2 or .3 or GC 6.5.4 which may result in an extension of *Contract Time*, or at any time for the convenience of the *Owner*, the *Owner* may, by giving the *Contractor* written notice, terminate the *Contract*.

## **GC 7.2 CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT**

7.2.1 If the *Owner* should be adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Owner's* insolvency, or if a receiver is appointed because of the *Owner's* insolvency, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, by giving the *Owner* or receiver or trustee in bankruptcy notice in writing, terminate the *Contract*.

7.2.2 If all or substantially all of the *Work* should be stopped or otherwise delayed for a continuous period of one hundred and eighty (180) days or more as a result of the occurrence of any one or more of the events described in GC 6.5.2, GC 6.5.3, GC 6.5.4 or GC 6.5.7 the *Contractor* may, by giving the *Owner* written notice, terminate the *Contract*.

7.2.3 The *Contractor* may notify the *Owner* in writing, with a copy to the *Consultant*, that the *Owner* is in default of its contractual obligations if:

- .1 the *Owner* fails to pay the *Contractor* when due the amounts certified by the *Consultant* or amounts awarded by arbitration or court in respect of the *Contract*, or
- .2 the *Owner* violates the requirements of the *Contract* to a substantial degree.

The *Contractor's* written notice to the *Owner* shall advise that if the default is not corrected in the twenty (20) *Working Days* immediately following the receipt of the written notice the *Contractor* may, without prejudice to any other right or remedy it may have, terminate the *Contract*.

7.2.4 The *Owner's* withholding of holdback and final payments or otherwise effecting any set-off permitted hereunder shall not constitute a default under this GC 7.2 permitting the *Contractor* to claim that the *Owner* is in default of the *Owner's* contractual obligations.

## **PART 8 DISPUTE RESOLUTION**

### **GC 8.1 AUTHORITY OF THE CONSULTANT**

8.1.1 Differences between the parties to the *Contract* as to the interpretation, application or administration of the *Contract* or any other disagreement between the parties including any disagreement as to any decision, finding or determination by the *Consultant*, herein collectively called disputes, which are not resolved to the mutual satisfaction of the parties in the first instance by findings of the *Consultant* subject to and as provided in GC 2.2 – ROLE OF THE CONSULTANT, shall be settled in accordance with the requirements of this PART 8.

8.1.2 If the matter in dispute is not resolved promptly the *Consultant* will give such instructions as in the *Consultant's* opinion are necessary for the proper performance of the *Work*. The parties shall act immediately according to such instructions, subject to GC 8.1.3, it being understood that by so doing neither party will jeopardize any claim they may have. If it is subsequently determined that such instructions were in error or at variance with the *Contract Documents*, the *Contractor* shall be entitled to payment for carrying out such instructions in accordance with the *Change Order* valuation procedures pursuant to GC 6.2.3.2.

- 8.1.3 As time is of the essence, it is essential that performance of the *Work* continue notwithstanding any such dispute. In the event the dispute is referred to an Adjudicator under GC 8.2.5 the parties shall, in accordance with GC 8.2.5.6 and notwithstanding GC 8.1.2, comply with any decision of the Adjudicator including the payment of any amounts the Adjudicator determines are owing and for greater certainty the parties will comply with the decision of the Adjudicator notwithstanding any referral of the dispute to arbitration or to the courts in accordance with GC 8.2.6 until a final determination of the matter is made by an arbitrator or a court, as the case may be.

## **GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION**

- 8.2.1 In accordance with the latest edition of the Rules for Mediation of Construction Disputes as provided in CCDC 40, the parties shall appoint a Project Mediator within thirty (30) days after the *Contract* was awarded. If the parties are unable to agree upon a Project Mediator within the prescribed time, then either party may request a judge of the Superior Court for the Province of Ontario to appoint the Project Mediator. The parties may at any time mutually agree in respect to a particular dispute not to proceed with either or both of the dispute resolution procedures set out in GC 8.2.4 and GC 8.2.5.
- 8.2.2 The claimant shall give written notice of a dispute to the other party/(parties), in the case of a dispute as to a decision, finding or determination made by the Consultant no later than five (5) *Working Days* after the receipt of the *Consultant's* decision, finding or determination given under GC 2.2 – ROLE OF THE CONSULTANT. Such notice shall set forth particulars of the matters in dispute, the probable extent and value of the damage and the relevant provisions of the *Contract Documents*. Such notice shall be copied to Infrastructure Ontario at the address set out in paragraph 8.1 of Article A.8 of the Agreement - RECEIPT OF AND ADDRESSES FOR NOTICES, for information purposes only. The other party shall reply to such notice no later than five (5) *Working Days* after it receives or is considered to have received it, setting out in such reply its grounds and other relevant provisions of the *Contract Documents*.
- 8.2.3 The parties shall first make good faith efforts to promptly resolve their disputes by amicable negotiations conducted by the senior representatives of the *Owner* and the *Contractor* at the *Place of the Work*. If, following good faith negotiations between them, resolution of a dispute has not been reached within five (5) *Working Days* of the request for negotiations, then upon the written request of either party, senior executive officers of each party shall attempt to resolve the dispute. If the dispute is resolved, such resolution shall be evidenced by an instrument in writing.
- 8.2.4 If a dispute has not been resolved within ten (10) *Working Days* of a party's written request for executive officer negotiation, then upon the written request of either party the dispute shall be submitted to the Project Mediator for mediation. The mediated negotiations shall be conducted in accordance with the latest edition of the Rules for Mediation of Construction Disputes as provided in CCDC 40. If the dispute is resolved, such resolution shall be evidenced by an instrument in writing.
- 8.2.5 If the dispute has not been resolved within ten (10) *Working Days* after the Project Mediator was requested under GC 8.2.4 or within such further period as agreed by the parties, the Project Mediator shall terminate the mediated negotiations by giving notice in writing to both parties, and the dispute shall be referred to adjudication in accordance with this GC 8.2.5. Such adjudication shall be conducted in accordance with the following:
- .1 Within thirty (30) days after the date of *Contract* award, the parties shall appoint an Adjudicator. If the parties are unable to agree upon an Adjudicator within the prescribed time, then either party may request a judge of the Superior Court for the Province of Ontario to appoint the Adjudicator.
  - .2 Either party may refer a dispute to the Adjudicator by providing written notice of its intention to the other party and the Adjudicator at least three (3) *Working Days* prior to making the referral.

- .3 Once a dispute has been referred to the Adjudicator, the Adjudicator is required to make a decision within twenty-eight (28) days of the referral, or such longer period as agreed by the parties after the dispute has been referred, and such decision shall be in writing.
- .4 The Adjudicator is required to act impartially in fulfilling his/her duties under this *Contract* and the Adjudicator may take whatever initiative he/she deems necessary in order to resolve the dispute, including requiring the parties to submit whatever documents, statements of position or other information the Adjudicator requires.
- .5 The Adjudicator may decide that any of the parties to the dispute is liable to make a payment under the *Contract* and when that payment is due.
- .6 In the absence of any directions by the Adjudicator relating to the time for performance of his/her decision, and notwithstanding any instruction received from the *Consultant* in accordance with GC 8.1.2, the parties shall be required to comply with any decision of the Adjudicator immediately on delivery of the decision to the parties in accordance with this paragraph.
- .7 If requested by one or both of the parties to the dispute, the Adjudicator shall provide reasons for his/her decision.
- .8 The Adjudicator shall be entitled to the payment of such reasonable amount as he/she may determine by way of fees and expenses reasonably incurred by him/her which the Adjudicator may apportion between the parties as he/she considers appropriate. Notwithstanding the foregoing, the parties shall be jointly and severally liable for any sum which remains outstanding following the making of any determination on how payment shall be apportioned such that if the Adjudicator is unable to recover his/her fees and expenses from one party, he/she may recover from the other.
- .9 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his/her functions as Adjudicator unless the act or omission is in bad faith.

8.2.6 By giving notice in writing to the other party not later than ten (10) *Working Days* after the receipt of the decision of the Adjudicator and subject to the parties' obligation to comply with the Adjudicator's decision in accordance with GC 8.1.3, either party may (i) elect, by written notice to the other party, to refer the dispute to be finally resolved by arbitration under the latest edition of the Rules for Arbitration of Construction Disputes as provided in CCDC 40, or (ii) elect, by written notice to the other party and regardless of whether the other party has given a notice under clause (i) above electing to refer the dispute to be finally resolved by arbitration, to require that the dispute be referred to and resolved solely by litigation in the Ontario Superior Court of Justice, and both parties agree to attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of the dispute, provided if the actual or potential total value or amount at issue in the dispute (as determined by adding all claims and counterclaims) is less than \$[REDACTED], taking into account recurrence over time if the dispute involves a recurring matter, the party which has not referred the dispute to be resolved by litigation may elect, by written notice given to the other party within ten (10) *Working Days* after the receipt of the notice requiring that the dispute be resolved by litigation, to refer the dispute to be finally resolved by arbitration. Such notice of arbitration or referral to court shall be copied to Infrastructure Ontario at the addresses set out in paragraph 8.1 of Article A.8 of the Agreement - RECEIPT OF AND ADDRESSES FOR NOTICES, for information purposes only. Notwithstanding that a notice of arbitration has been delivered, if the actual or potential total value or amount at issue in the dispute (as determined by adding all claims and counterclaims) is \$[REDACTED] or more, taking into account recurrence over time if the dispute involves a recurring matter, then either party may elect, by written notice to the other party, to require that the dispute be referred to and resolved solely by litigation in the Ontario Superior Court of Justice, and both parties agree to attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of the dispute.

8.2.7 [INTENTIONALLY DELETED].

8.2.8 **[INTENTIONALLY DELETED]**.

8.2.9 Except otherwise as provided in the *Contract Documents*, no arbitration arising out of or relating to the *Contract Documents* shall include by consolidation, joinder or in any other manner any other individual or entity who is not a party to this *Contract* unless:

- .1 the inclusion of such other individual or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration;
- .2 such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings; and
- .3 the written consent of the other individual or entity sought to be included and of the *Owner* and the *Contractor* has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

Notwithstanding the preceding paragraph, if a claim, dispute or other matter in question between the *Owner* and the *Contractor* involves the work of a *Subcontractor* or *Supplier* either the *Owner* or the *Contractor* may join such entity as a party to the arbitration between the *Owner* and the *Contractor* hereunder. The *Contractor* shall include in all subcontracts a specific provision whereby the *Subcontractor* consents to being joined in an arbitration between the *Owner* and the *Contractor* involving the *Work* of such *Subcontractor*, in accordance with this PART 8, including, without limitation, this GC 8.2. Nothing in this paragraph nor in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favour of the *Subcontractor* or the *Supplier* against the *Owner*.

8.2.10 **[INTENTIONALLY DELETED]**

8.2.11 The *Contractor* agrees that any claims made by it against any other contractor(s) of the *Owner* based (in whole or in part) as a result of any acts or omissions of other contractor(s) shall, in the first instance, be submitted to the *Owner*. The *Owner* shall then, with the assistance of the *Contractor*, present the claim to the other contractor(s) for resolution under the terms of the applicable contract(s). The *Contractor* has the full responsibility for the preparation of such claims and the *Contractor* shall bear the complete expense of preparing and presenting its claim, including legal fees. The *Contractor* agrees that it will not pursue or will stay any legal proceeding related to the claim(s), with the exception of initiating legal proceedings to assert any statutory right to a lien under the *Construction Lien Act* (Ontario), for a reasonable period of time to allow the *Owner* to reach a resolution acceptable to the *Contractor* under the terms of the applicable contract. If such resolution has not been achieved within a reasonable period of time the *Contractor* may then proceed with any legal proceeding against the other contractor of the *Owner*. The *Contractor* shall proceed diligently with its *Work* under the *Contract* pending resolution of any such claim or dispute when directed to do so by the *Owner*.

### **GC 8.3 RETENTION OF RIGHTS**

8.3.1 It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses, provided the party has given the notices required under this PART 8 and has carried out the instructions as provided in GC 8.1.2.

8.3.2 Nothing in this PART 8 shall be construed in any way to limit a party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of the *Place of the Work* and the assertion of such right by initiating judicial proceedings is not to be construed as a waiver of any right that party may have under GC 8.2.6 to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.

## **PART 9 PROTECTION OF PERSONS AND PROPERTY**

### **GC 9.1 PROTECTION OF WORK AND PROPERTY**

- 9.1.1 The *Contractor* shall protect the *Work* and the *Owner's* property at the *Place of the Work* including the *Existing Hospital* and property adjacent to the *Place of the Work* from damage which may arise as the result of the *Contractor's* operations under the *Contract*, and shall be responsible for such damage, except damage which occurs as the result of:
- .1 *Design Issues* (other than *Design Issues* which are properly characterized as *Contractor's Design Contingency* matters under GC 4.2 – CONTRACTOR'S DESIGN CONTINGENCY); or
  - .2 acts or omissions by the *Owner*, the *Consultant* or any contractor retained by the *Owner* directly and whose contract is not assigned to the *Contractor*, their respective agents and employees.
- 9.1.2 Should the *Contractor* in the performance of the *Contract* damage the *Work*, the *Owner's* property at the *Place of the Work* including the *Existing Hospital* or property adjacent to the *Place of the Work*, the *Contractor* shall be responsible to *Make Good* such damage at the *Contractor's* expense.
- 9.1.3 Should damage occur to the *Work* or the *Owner's* property at the *Place of the Work* including the *Existing Hospital* for which the *Contractor* is not responsible, as provided in GC 9.1.1, the *Contractor* shall *Make Good* such damage to the *Work* and, if the *Owner* so directs, to the *Owner's* property and the *Guaranteed Price* and *Contract Time* shall be adjusted (including on account of *Overhead and Profit Fee*) as provided in GC 6.1 – CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 9.1.4 The *Contractor* shall not undertake to repair and/or replace any damage whatsoever to adjoining property or acknowledge the same was caused or occasioned by the *Contractor*, without first consulting the *Owner* and receiving written instructions as to the course of action to be followed.
- 9.1.5 Notwithstanding GC 9.1.4 where there is danger to life or property which arises out of or in connection with the performance of the *Work*, either party may but the *Contractor* shall take such emergency action as is necessary to remove the danger.

### **GC 9.2 DAMAGES AND MUTUAL RESPONSIBILITY**

- 9.2.1 If either party to the *Contract* should suffer damage in any manner because of any wrongful act or neglect of the other party or of anyone for whom the other party is responsible in law or under the terms of the *Contract*, then that party shall be reimbursed by the other party for such damage. The reimbursing party shall be subrogated to the rights of the other party in respect of such wrongful act or neglect if it be that of a third party.
- 9.2.2 Claims for damage under GC 9.2.1 shall be made in writing to the party liable within reasonable time after the first observance of such damage and if undisputed shall be confirmed by *Change Order*. Disputed claims shall be resolved as set out in PART 8 - DISPUTE RESOLUTION and when finally determined shall be confirmed by *Change Order* under GC 6.2 – CHANGE ORDER.
- 9.2.3 If the *Contractor* has caused damage to the work of another contractor related to the *Project*, the *Contractor* agrees upon due notice to settle with the other contractor by negotiation or arbitration in accordance with GC 3.2.5 and PART 8 – DISPUTE RESOLUTION. If the other contractor makes a claim against the *Owner* on account of damage alleged to have been so sustained, the dispute shall be dealt with in substantially the same manner as contemplated in GC 3.2.5 and PART 8 – DISPUTE RESOLUTION. The *Owner* shall notify the *Contractor* of any such claim made by a contractor and the *Owner* may, at its option, require the *Contractor* to defend the claim at the *Contractor's* expense. The *Contractor* may at its option elect to defend the claim at the *Contractor's* expense, and where the *Owner* defends the claim the *Contractor* shall have a right to consent, acting reasonably, in respect to any

settlement between the *Owner* and such other contractor. Without limiting the generality of the foregoing, the *Contractor* shall indemnify and hold harmless the *Owner*, the *Consultant*, the *Owner's Project Manager* and the Ontario Infrastructure Projects Corporation, and their respective agents, consultants, officers, directors and employees and their successors and assigns as well as her Majesty the Queen in right of Ontario, her ministers, agents and employees or any person for whom they are in law responsible, from such claims, including the satisfaction of any order or judgment made against the *Owner* or the *Consultant* and for any and all legal and other costs incurred by the *Owner* or the *Consultant* arising from such action.

- 9.2.4 If the *Contractor* becomes liable to pay or satisfy a final order, judgment or award against the *Owner*, then the *Contractor*, upon undertaking to indemnify the *Owner* against any and all liability for costs and, at the *Owner's* option, providing the *Owner* with security (financial instrument dependent on what is at issue) for payment thereof, shall have the right to appeal in the name of the *Owner* such final order or judgment to any and all courts of competent jurisdiction.

### **GC 9.3 HAZARDOUS MATERIALS**

- 9.3.1 For the purposes of applicable environmental legislation, the *Owner* shall be deemed to have control and management of the *Place of the Work* with respect to existing conditions.

- 9.3.2 Prior to the *Contractor* commencing the *Work*, the *Owner* has taken

- .1 all reasonable steps to determine whether any hazardous, toxic or harmful substances or materials as defined by applicable law, rules, regulations or ordinances ("Hazardous Materials") are present at the *Place of the Work*, and
- .2 provided the *Consultant*, the *Lender's Consultant* and the *Contractor* with a report on any such *Hazardous Materials*, which report the *Contractor* acknowledges is included in the *Site Background Reports*.

- 9.3.3 The *Contractor* shall take all reasonable steps to ensure that:

- .1 no person suffers injury, sickness or death and no property is injured or destroyed as a result of exposure to or the presence of *Hazardous Materials* which were at the *Place of the Work* prior to the *Contractor* commencing the *Work* and which are described in or are properly inferable from the *Site Background Reports* ("*Disclosed Hazardous Materials*"),
- .2 all necessary steps are taken in accordance with legal requirements, to dispose of, store or otherwise render harmless *Disclosed Hazardous Materials*, and
- .3 there is no discharge, escape, emission, leak, deposit, dispersion or migration into the environment ("*Release*") or threatened *Release* of any *Disclosed Hazardous Materials* at or from the *Place of the Work* which has or may have an adverse effect upon the environment or human health or safety,

as a result of the performance of the *Work* by the *Contractor*.

- 9.3.4 The *Contractor* shall take reasonable steps to ensure that:

- .1 no person suffers injury, sickness or death and no property is injured or destroyed as a result of exposure to or the presence of *Hazardous Materials* brought to the *Place of the Work* by the *Contractor* or any *Subcontractor*, *Supplier* or *Sub-Subcontractor* or any of their respective agents or employees or anyone else for whom the *Contractor*, *Subcontractor*, *Supplier* or *Sub-Subcontractor* is at law responsible in connection with the *Performance of the Work* by the *Contractor* (collectively "*Contractor Hazardous Materials*"),

- .2 the *Contractor* and its *Subcontractors*, *Suppliers* and *Sub-Subcontractor* and their respective agents and employees and anyone else for whom the *Contractor*, *Subcontractor*, *Supplier* or *Sub-Subcontractor* is at law responsible comply with all applicable laws, rules, regulations and ordinances relating to *Contractor Hazardous Materials*, and
- .3 there is no *Release* or threatened *Release* of any *Contractor Hazardous Materials* at or from the *Place of the Work* which has or may have an adverse effect upon the environment or human health or safety.

9.3.5 If the *Contractor*

- .1 encounters *Hazardous Materials* at the *Place of the Work*, or
- .2 has reasonable grounds to believe that *Hazardous Materials* are present at the *Place of the Work*,  
which were not disclosed by the *Owner* under GC 9.3.2 (“Undisclosed Hazardous Materials”), the *Contractor* shall
- .3 take all reasonable steps, including stopping the *Work*, to ensure that no person suffers injury, sickness or death and that no property is injured or destroyed as a result of exposure to or the presence of the *Hazardous Materials*, and
- .4 immediately report the circumstances to the *Consultant*, the *Lender’s Consultant* and the *Owner* in writing.

9.3.6 If the *Contractor* is delayed in performing the *Work* or incurs additional costs as a result of taking steps required under GC 9.3.5.3 or (except where a *Release* or threatened *Release* is caused by a default by the *Contractor* in the performance of its obligations under this GC 9.3 – HAZARDOUS MATERIALS) GC 9.3.10, the *Consultant* shall issue appropriate instructions for a *Change in the Scope of the Work* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE and the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Owner* and the *Contractor* and the *Guaranteed Price* shall be adjusted by a reasonable amount for costs incurred by the *Contractor* as a result of the delay and as a result of taking those steps.

9.3.7 Notwithstanding GC 2.2.6 and GC 2.2.7 of GC 2.2 – ROLE OF THE CONSULTANT, or GC 8.1.1 of GC 8.1 – AUTHORITY OF THE CONSULTANT, the *Consultant* may select and rely upon the advice of an independent expert in a dispute under GC 9.3.6 and, in that case, the expert shall be deemed to have been jointly retained by the *Owner* and the *Contractor* and shall be jointly paid by them.

9.3.8 The *Owner* shall indemnify and hold harmless the *Contractor*, *Project Co*, the *Lender*, the *Lender's Consultant*, the *Consultant*, the *Owner's Project Manager* and the Ontario Infrastructure Projects Corporation, their agents, consultants, officers, directors and employees and their successors and permitted assigns as well as her Majesty the Queen in right of Ontario, her ministers, agents and employees or any person for whom they are in law responsible (the "*Indemnified Persons*") from and against any and all claims, demands, losses, costs (including clean up costs) and expenses (including reasonable legal fees on a full indemnity basis), damages, actions, fines or penalties, suits or proceedings (collectively, "*Claims*") arising out of or resulting from:

- .1 exposure to, or the presence of, *Hazardous Materials* at the *Place of the Work* other than *Contractor Hazardous Materials*;
- .2 the breach of any applicable laws, rules, regulations or ordinances relating to such *Hazardous Materials*; and



- .3 any *Release* or threatened *Release* at or from the *Place of the Work* of any such *Hazardous Materials* which have or may have an adverse effect upon the environment or human health or safety;

other than *Contractor Indemnified Claims* as set out in GC 9.3.9 (collectively, the "*Owner Indemnified Claims*"). It is expressly agreed and understood that such indemnification shall apply and extend to *Owner Indemnified Claims* made by federal, provincial or local government entities or agencies. It is further expressly agreed and understood that such indemnification shall apply to all *Owner Indemnified Claims* arising even if such *Owner Indemnified Claims* are not discovered or made until after the performance of the *Work* or after conclusion of the *Contract*. This obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity set out in GC 12.1 - INDEMNIFICATION or which otherwise exist respecting a person or party described in this paragraph. The *Contractor* shall notify the *Owner* of any *Owner Indemnified Claim* and the *Contractor* may, at its option, require the *Owner* to defend the *Owner Indemnified Claim* at the *Owner's* expense. The *Owner* may at its option elect to defend any *Owner Indemnified Claim* at the *Owner's* expense, and where the *Contractor* defends an *Owner Indemnified Claim* the *Owner* shall have a right to consent, acting reasonably, in respect to any settlement of the *Owner Indemnified Claim*.

- 9.3.9 The *Contractor* shall indemnify and hold harmless the *Owner*, the *Lender*, the *Lender's Consultant*, the *Consultant*, the *Owner's Project Manager* and the Ontario Infrastructure Projects Corporation, their agents, consultants, officers, directors and employees and their successors and permitted assigns as well as her Majesty the Queen in right of Ontario, her ministers, agents and employees or any person for whom they are in law responsible (the "*Indemnified Persons*") from and against any and all *Claims* arising out of or resulting from any matter or circumstance relating to:

- .1 the *Contractor's* obligations under this GC 9.3 -HAZARDOUS MATERIALS, and
- .2 *Contractor's Hazardous Materials* except where the *Claim* results from any act or omission of the *Owner* or any other contractor of the *Owner* or any of the *Owner's* own forces in relation to the *Contractor's Hazardous Materials*,

(collectively, the "*Contractor Indemnified Claims*"). It is expressly agreed and understood that such indemnification shall apply and extend to *Contractor Indemnified Claims* made by federal, provincial or local government entities or agencies. It is further expressly agreed and understood that such indemnification shall apply to all *Contractor Indemnified Claims* arising out of such actual spilling, dumping, release and/or disposal of *Hazardous Materials* even if such *Contractor Indemnified Claims* are not discovered or made until after the performance of the *Work* or after conclusion of the *Contract*. This obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity set out in GC 12.1- INDEMNIFICATION. The *Owner* shall notify the *Contractor* of any *Contractor Indemnified Claim* and the *Owner* may, at its option, require the *Contractor* to defend the *Contractor Indemnified Claim* at the *Contractor's* expense. The *Contractor* may at its option elect to defend any *Contractor Indemnified Claim* at the *Contractor's* expense, and where the *Owner* defends a *Contractor Indemnified Claim* the *Contractor* shall have a right to consent, acting reasonably, in respect to any settlement of the *Contractor Indemnified Claim*.

- 9.3.10 In the event of any *Release* or threatened *Release* of any *Hazardous Materials* at or from the *Place of the Work*, the *Contractor* shall immediately upon becoming aware of the same notify the *Consultant* and the *Owner* of such event.

- 9.3.11 This GC 9.3 shall govern over the provisions of GC 1.3.1 of GC 1.3 – RIGHTS AND REMEDIES or GC 9.2 – DAMAGES AND MUTUAL RESPONSIBILITY.

- 9.3.12 If the *Contractor* causes or permits:

- .1 any *Contractor Hazardous Materials* to be dealt with by the *Contractor* or any *Subcontractor* or *Supplier* in a manner which does not comply with applicable legal and regulatory requirements or which threatens human health and safety or the environment or causes material damage to the property of the *Owner* or others; or
  - .2 any *Disclosed Hazardous Materials* which were then harmless or stored, contained or otherwise dealt with in accordance with applicable legal and regulatory requirements, to be dealt with by the *Contractor* or any *Subcontractor* or *Supplier* in a manner which does not comply with applicable legal and regulatory requirements or which threatens human health and safety or the environment or causes material damage to the property of the *Owner* or others,
- the *Contractor* upon becoming aware of the same shall:
- .3 take all reasonable steps, including stopping the *Work*, to ensure that no person suffers injury, sickness or death and that no property is injured or destroyed as a result of exposure to or the presence of the *Hazardous Materials*, and
  - .4 immediately upon becoming aware of the same report the circumstances to the *Consultant* and the *Owner* by telephone, confirmed in writing.

9.3.13 In the circumstances contemplated in GC 9.3.3, GC 9.3.4, GC 9.3.5 or GC 9.3.12, the *Contractor* shall perform its obligations thereunder at the *Contractor's* sole cost and expense except in the circumstances contemplated by GC 9.3.5 which shall be at the *Owner's* sole cost and expense in accordance with the provisions of GC 9.3.6. The *Contractor* shall perform its obligations under GC 9.3.3, GC 9.3.4, GC 9.3.5 and GC 9.3.12, including, as applicable, any clean up, removal, containment, storage or other dealing with the relevant *Hazardous Materials* and any remediation of damage caused thereby, in a manner which the authorities having jurisdiction determine will:

- .1 meet all applicable legal and regulatory requirements, including the applicable Table of the Soil Groundwater and Sedimentary Standards for use under Part XV.1 of the *Environmental Protection Act* dated March 9, 2004 and ensure compliance with any applicable permits or other authorizations; and
- .2 rectify all material damage to the property of the *Owner* and others.

## **PART 10 GOVERNING REGULATIONS**

### **GC 10.1 TAXES AND DUTIES**

- 10.1.1 The *Contractor* shall pay all customs, taxes and duties in effect during the performance of the *Work*. The amount incurred shall be included in the *Cost of the Work*. The *Guaranteed Price* shall include Provincial Sales Tax but exclude *Value Added Taxes*. The *Owner* shall be entitled to claim for any exemptions and rebates available under Section 7(1)38 of the *Retail Sales Tax Act* (Ontario) and the *Contractor* shall cooperate with the *Owner* and provide any information and documentation as may be required by the *Owner* to obtain any such exemption and rebate.
- 10.1.2 Any increase or decrease in costs to the *Contractor* due to changes in such included taxes and duties after the time of the *RFP Submission* shall increase or decrease the *Guaranteed Price* accordingly, except for changes announced before the time of the *RFP Submission*, and to take effect at some time thereafter, which shall, except as expressly set forth in GC 10.1.1, be deemed to have been taken into account in the *Guaranteed Price*.
- 10.1.3 The *Contractor* is not entitled to any mark-up for profit, overhead or otherwise, due to an increase in taxes or duties. The *Contractor* shall be entitled to claim for the increase in cost equal to the amount of the tax and/or duty on the uncompleted cost of the *Work*. The *Owner* will be entitled to withhold payment

to the *Contractor* a sum equal to the amount of tax and/or duty reduction on the uncompleted portion of the *Work*.

- 10.1.4 When an exemption or recovery of government sales taxes, duties or excise taxes is applicable to the *Contract*, the *Contractor* shall at the request of the *Owner* assist, join in, or make application for an exemption, recovery or refund of all such taxes and duties and all amounts recovered or exemptions obtained shall be for the sole benefit of the *Owner*. The *Contractor* agrees to endorse over to the *Owner* any cheques received from the federal or provincial governments as may be required to implement the foregoing failing which the *Owner* is hereby authorized to deduct the amount from any *Contract* payment that is then or may thereafter become due to the *Contractor*.
- 10.1.5 The *Contractor* shall maintain and make available to the *Consultant* accurate records, tabulating equipment and component costs showing respective taxes and duties or excise taxes.
- 10.1.6 The *Contractor* is referred to the news release from the Ontario Ministry of Labour dated June 14, 2001 "Government Acts to Level Playing Field for Ontario Contractors". The *Contractor* and all *Subcontractors* will be required to show proof relating to compliance with the Ontario Provincial Retail Sales Tax requirements in the form of a statement of compliance of regulations and a valid vendor permit registration number.

## **GC 10.2 LAWS, NOTICES, PERMITS AND FEES**

- 10.2.1 The laws of the *Place of the Work* shall govern the *Work*.
- 10.2.2 The *Owner* shall obtain and pay for the building permit, temporary and permanent easements, and rights of servitude. The *Contractor* shall be responsible to obtain and pay for all other permits, licenses, or certificates and pay the fees and deposits necessary for the performance of the *Work* which were in force at the date of the *RFP Submission* which costs shall form part of the *Guaranteed Price*.
- 10.2.3 The *Contractor* shall give the required notices and comply without delay with the laws, ordinances, rules, regulations, or codes which are or become in force during the performance of the *Work* and which relate to the *Work*, to the preservation of the public health, and to construction safety. Whenever standards of the laws, ordinances, rules, regulations, codes and orders relating to the *Work* differ, the most stringent standards shall govern.
- 10.2.4 Except as may constitute a *Design Issue* properly characterized as a *Contractor's Design Contingency* matter under GC 4.2.2 and except in respect of those *Contract Documents* which, under the terms of the *Contract*, the *Contractor* is required to prepare or produce, the *Contractor* shall not be responsible for verifying that the *Contract Documents* are in compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Work*. If the *Contract Documents* are at variance therewith, or if, subsequent to the date of the *RFP Submission*, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the *Contract Documents*, the *Contractor* shall notify the *Consultant* in writing requesting direction immediately upon such variance or change becoming known. The *Consultant* will make the changes required to the *Contract Documents* as provided in GC 6.1 – CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 10.2.5 If the *Contractor* fails to notify the *Consultant* in writing, fails to obtain direction as required in GC 10.2.4, and performs *Work* knowing it to be contrary to any laws, ordinances, rules, regulations or codes, the *Contractor* shall be responsible for and shall correct the violations thereof and shall bear the costs, expenses and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations, or codes.
- 10.2.6 The *Contractor* shall furnish necessary certificates as evidence that the *Work* installed conforms with laws and regulations of authorities having jurisdiction, including all certificates necessary for the *Consultant* to certify as required to obtain a permit for the *Owner's* occupancy or partial occupancy. These certificates

are to be final certificates giving complete clearance of the portions of the *Work* for which they are obtained.

### **GC 10.3 PATENT FEES**

10.3.1 The *Contractor* shall pay the royalties and patent licence fees required for the performance of the *Contract*. The amount incurred shall be included in the *Guaranteed Price*. The *Contractor* shall indemnify and hold the *Owner* harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Contractor's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention by the *Contractor* or anyone for whose acts the *Contractor* may be liable.

10.3.2 The *Owner* shall indemnify and hold the *Contractor* harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Contractor's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the *Contract*, the model, plan, specification or design of which was supplied to the *Contractor* as part of the *Contract Documents*.

### **GC 10.4 WORKERS' COMPENSATION**

10.4.1 Prior to commencing the *Work* and prior to receiving payment on *Completion of the Interim Work, Substantial Performance of the Work*, completion of the *Contract* and the final certificate for payment, and for each application for payment, the *Contractor* shall provide a clearance certificate, obtained from the Workplace Safety and Insurance Board, indicating compliance with workers' compensation legislation at the *Place of the Work*, including payments due thereunder.

10.4.2 At any time during the term of the *Contract*, when requested by the *Owner*, the *Contractor* shall provide such evidence of compliance by the *Contractor* and *Subcontractors*.

## **PART 11 INSURANCE — BONDS**

### **GC 11.1 INSURANCE**

11.1.1 The *Contractor's* Insurance

.1 Without restricting the generality of GC 12.1 – INDEMNIFICATION, the *Contractor* shall provide, maintain and pay for the insurance specified in GC 11.1.1.2. Unless otherwise stipulated (including, without limitation, as provided under GC 11.1.1.2.1), the duration of each insurance policy shall be from the date of commencement of the *Work* until the date of *Substantial Performance of the Work*. Coverage under these policies extends only to the activities of the insureds in relation to the *Project*. Unless otherwise stated, these policies will:

.1 be non-contributing and primary;

.2 in the case of the General Liability insurance set out in GC 11.1.1.2.1, include as additional insureds the City of Mississauga, Infrastructure Ontario, Her Majesty the Queen in Right of Ontario, her ministers, agents and employees, the *Lender* and the *Lender's Consultant* and include as first named insured, *Project Co* and the *Contractor*, and as named insureds the *Owner*, the *Owner's Project Manager*, *Suppliers* who install *Products*, *Subcontractors*, *Sub-Subcontractors* and the *Consultant* and such other entities, persons, firms or corporations as the *Owner* may reasonably determine;

.3 in the case of the property and boiler and machinery insurance set out in GC 11.1.1.2.2, include as named insured the *Contractor*, the *Owner*, the *Lender* and *Project Co* and as additional insureds, *Suppliers* who install *Products*, *Subcontractors*, *Sub-Subcontractors*,

the *Consultant*, the *Lender's Consultant*, and such other entities, persons, firms or corporations as the *Contractor*, the *Owner* and the *Owner's* insurance consultant may determine; and

- .4 the *Contractor* shall place, maintain and pay at its sole cost and expense all premiums for the insurance specified in GC 11.1.1.2. All required insurance policies shall be placed and maintained with insurers having an AM Best's Rating of not less than A-IX that are licensed to underwrite insurance in the jurisdiction of the *Place of the Work*. All policies must act as primary and non-contributory and must be endorsed to provide the *Owner* and the *Lender* with not less than sixty (60) days prior written notice of cancellation or adverse material change in coverage. All policies, other than Automobile Liability Insurance and Wrap-up shall include a waiver of subrogation by the insurer against any additional insured thereunder including, without limitation, the *Owner*, the *Lender* and any other entity to whom the *Owner* or the *Contractor* have agreed to waive rights of subrogation (excluding claims arising out of the professional services provided by the architects and engineers engaged in the *Project*). The policies will take effect prior to the commencement of the *Work* and shall, unless otherwise stipulated (including, without limitation, GC 11.1.1.2.1), be maintained until the date of *Substantial Performance of the Work*. The *Contractor* is responsible for ensuring that all policies provide coverage in a scope and form that is considered normal for the *Project*.
- .2 The policies to be placed and maintained by the *Contractor* are:
  - .1 General Liability Insurance (Wrap-up Form):

General Liability insurance with limits of not less than \$[REDACTED] per occurrence and \$[REDACTED] in the aggregate, and with a deductible not exceeding \$[REDACTED] and shall include: Products & Completed Operations Aggregate \$[REDACTED]; Non-Owned Automobile \$[REDACTED]; Tenants Legal Liability \$[REDACTED]; Medical Payments (\$[REDACTED] per person/\$[REDACTED] aggregate); Damage to Existing Structures included; Damage to Hired Automobile \$[REDACTED]; Employment Practices Exclusion; Mould Exclusion; Asbestos Exclusion; Data Exclusion; Terrorism Exclusion; coverage will be provided for completed operations for a period of not less than twenty-four (24) months from the *Substantial Performance Date*.
  - .2 Property and Boiler and Machinery Insurance (Builder's Risk Form):
    - .1 Builder's risk insurance on an "all risks" form with a deductible not exceeding \$[REDACTED] except in respect to flood, the deductible shall be \$[REDACTED] and in respect to earth movement the deductible shall be a minimum of \$[REDACTED] or [REDACTED]% subject to usual exclusions but with coverage to include sewer back-up, earth movement and flood for a direct damage sum insured of not less than the sum of the amount of the *Guaranteed Price* and the full value of *Work* and *Products* to be provided by the *Owner* and in any event, in an amount for insured physical loss or damage representing not less than [REDACTED] ([REDACTED]%) of the *Cost of the Work*. The builder's risk insurance shall also include extra expense and expediting expense coverage and delay in start-up insurance (including coverage for property while in transit or stored off-site) on a revenue form basis with a twenty four (24) month period of indemnity at the *Owner's* discretion. Coverage will be at least equal to that afforded under IBC Form 4042 or 4047 (the CCDC Endorsement). The "faulty workmanship material and design" exclusion in the Policy shall be no less than the commonly applied "particular part" definition that clarifies the point at which covered "resultant damages" would apply. This exclusion is commonly referred to by Insurers as London Engineering Group (LEG) 2 or Design Exclusion (DE)

4. If the *Contractor* proposes to use a broader form that includes “defect rectification costs” commonly known as a LEG 3 or DE 5, the cost difference between this and the more restrictive LEG 2 and DE 4 forms shall be presented to the *Owner* for consideration.

Coverage will include soft costs including but not limited to interest on money borrowed to finance construction or reconstruction; fees and other charges incurred to negotiate construction loans; real estate taxes; architectural, engineering and other professional fees; insurance premiums for builder’s risk and General Liability coverage; legal and accounting fees; cost of commissions to renegotiate leases; and cost of permit and licenses.

.2 Coverage shall include hot testing and commissioning and include boiler and machinery insurance for the boilers, pressure vessels and other insurable objects forming part of the *Work* and shall match to the periods required within the *Construction Schedule*.

.3 The policies shall allow for partial or total use or occupancy of the *Work*.

.4 If boiler and machinery insurance is arranged under a separate policy to the builder’s risk, the soft costs and delay in start-up coverages are to be extended within the separate Boiler and Machinery policy.

.5 The proceeds of all insurance described in GC 11.1.1.2.2.1 (herein this GC 11.1.1.2.2.5 the “*Proceeds*”) shall be paid to the insurance trustee under the *Insurance Trust Agreement*.

.3 Automobile Liability Insurance:

Automobile liability insurance in respect of licensed vehicles shall have limits of not less than \$[REDACTED] inclusive per occurrence for bodily injury, death, and damage to property, covering all licensed vehicles owned or leased by the *Contractor*. Where the policy has been issued pursuant to a government-operated automobile insurance system, the *Contractor* shall provide the *Owner* with confirmation of automobile insurance coverage for all automobiles registered in the name of the *Contractor*.

.4 Aircraft and Watercraft Liability Insurance:

Aircraft and watercraft liability insurance with respect to owned or non-owned aircraft and watercraft if used directly or indirectly in the performance of the *Work*, including use of additional premises, shall be subject to limits of not less than \$[REDACTED] inclusive per occurrence for bodily injury, death, and damage to property including loss or use thereof and limits of not less than \$[REDACTED] for aircraft passenger hazard. Such insurance shall be in a form acceptable to the *Owner* and the *Lender*.

.5 *Contractor’s* Equipment Insurance:

All risks contractors’ equipment insurance covering construction machinery and equipment used by the *Contractor* for the performance of the *Work*, including equipment breakdown coverage, shall be in a form acceptable to the *Owner* and the *Lender* and shall not allow subrogation claims by the insurer against the *Owner* and the *Lender*.

.6 Liability Insurance

The *Contractor* shall maintain at all times during the *Project* a Commercial General Liability insurance policy for not less than \$[REDACTED]. The *Owner*, the *Consultant* and the *Lender* are to be included as additional insured and the policy shall include all standard endorsements required of contractors including but, not limited to: Bodily Injury & Property Damage (policy limit); Personal Injury (policy limit); Non-Owned Automobile (policy limit); Tenant's Legal Liability; Medical Payments (min. \$[REDACTED] per person); Contingent Employers Liability; Owners & Contractor's Protective; Broad Form Property Damage; Cross Liability; Blanket Contractual Liability. This liability insurance will address *offsite work related to the Project*.

- .7 [INTENTIONALLY DELETED];
- .8 Marine Cargo Insurance:

Marine Cargo Insurance to cover physical loss or damage to any property or equipment that is being transported by ship including Extra Expense and Expediting Expense and (at the *Owner's* discretion) Delay in start-up insurance (advanced loss of revenue insurance) on a gross profit basis with a twenty four (24) month period of indemnity.
- .9 The *Contractor* shall deliver to the *Owner* after commencement of coverage under policies placed and maintained by the *Contractor*, certified copies of all insurance policies evidencing that the applicable policies are in force.
- .10 The policies described in GC 11.1.1.2 will be placed and maintained with insurers acceptable to the *Owner*, the *Consultant* and the *Lender*, and will contain such terms and conditions as the *Owner* and the *Lender* may require, acting reasonably. The *Owner* shall place and maintain such other insurance as the *Owner* considers necessary or desirable for its own protection, but in each case at the sole cost of the *Owner* and such insurance shall not be in conflict with any of the insurance described in this GC 11.1.1 as "Contractor's Insurance".
- .11 The *Owner* is not responsible for obtaining or maintaining in force, (i) insurance on equipment machinery or tools, owned by, rented to, or in the care, custody and control of the *Contractor* or its *Subcontractors* or, (ii) any other form of insurance not referred to specifically in GC 11.1.1.2.
- .12 Where the full insurable value of the *Work* is substantially less than the *Guaranteed Price*, the *Owner* may, in its sole discretion, reduce the amount of insurance required.
- .13 Proof of Insurance
  - .1 The *Contractor* shall seven (7) days prior to the commencement of the *Work*, within three (3) days of any renewal, change or replacement of coverage or at the request of the *Owner*, from time to time, furnish to the *Owner* two (2) copies of certificates of insurance (CSIO standard certificate forms) signed by an authorized representative of the insurer, and one (1) copy of certified policies once received from the insurer. The *Contractor* is obliged to confirm that the premium associated with such policies has been paid. Receipt by the *Owner* of the above information shall in no way constitute confirmation by the *Owner* that the insurance complies with the requirement of GC 11.1.1.2. Responsibility for ensuring that the insurance coverages outlined in GC 11.1.1.2 are in place, rests solely with the *Contractor*.
  - .2 The *Contractor* shall require where reasonably practical its *Subcontractors*, *Sub-Subcontractors* and *Suppliers* who install *Products* with the exception of the blanket protection given them under builder's risk and Wrap-up Forms to provide to it the same type and form of insurance that is required to be obtained by the *Contractor* pursuant to GC 11.1.1.2, in each case to the extent determined by the *Owner's* insurance consultant as being applicable to that portion of the *Work* being undertaken by such *Subcontractors*,

*Sub-Subcontractors and Suppliers* who install *Products* and the *Contractor* is responsible for obtaining and forwarding to the *Owner* the appropriate signed certificates or other proof of insurance in accordance with and subject to the requirements of this General Condition.

.14 Commencement of the *Work*

Neither the *Contractor* nor any of its *Subcontractors, Sub-Subcontractors* or *Suppliers* who install *Products* shall begin the *Work* at the *Place of the Work* until necessary proofs of insurance have been furnished and approved by the *Owner* and the *Owner's* insurance consultant.

.15 Policy Requirements

All insurance shall include the *Owner, the Lender, the Consultant, the Lender's Consultant, the Owner's Project Manager* and the *Owner's* directors, officers, employees and agents, as directed by the *Owner* and any other consultant, other contractor or subcontractor engaged in or in relation to the *Work* or such other entities, persons, firms or corporations as the *Owner* and the *Owner's* insurance consultant may determine as insured, named insured, or additional insured; both with respect to the *Contractor's* insurance as well as the *Subcontractor's, Sub-Subcontractor's* and *Supplier's* insurance. All insurance shall provide for cross-liability so that each insured has the same rights under the policy as if the policy had been issued in respect of each insured. This named insured or additional insured requirement does not apply to automobile insurance.

.16 Maintaining Insurance

If the *Contractor* or its *Subcontractors, Sub-Subcontractors* or *Suppliers* who install *Products* fail to place or maintain insurance as required under GC 11.1.1.2, the *Owner* shall have the right, but is not obligated, to place and maintain insurance as required. All premiums and other costs incurred by the *Owner* will be paid by the *Contractor* to the *Owner* on demand, or failing payment may be deducted by the *Owner* from any amount then or thereafter due to the *Contractor*.

.17 Additional Insurance

From time to time the *Owner* at its discretion, by written notice to the *Contractor*, may require the *Contractor* to, or cause a *Subcontractor, a Sub-Subcontractor* or a *Supplier* who install *Products* to, procure or maintain additional insurance if required. If such insurance is requested the *Owner* shall reimburse the applicable party.

.18 *Contractor* Liability Preserved

The provisions of GC 11.1.1.2 do not diminish, limit or otherwise affect the liability of the *Contractor* to the *Owner* under or in relation to any other provisions of the *Contract*.

11.1.2 Priority of *Owner's* Claims

The principal purpose of the stipulations for insurance in GC 11.1.1 is the protection of the interest of the *Owner* and the *Lender*. GC 11.1.1 stipulates that the *Contractor*, rather than the *Owner*, shall provide and maintain insurance as set out therein.

11.1.3 The *Owner's* existing property insurance is described in GC 13.7 – OWNER'S PROPERTY INSURANCE and the *Owner* agrees to maintain such property insurance or substantially similar property insurance during the performance of the *Work*

11.1.4 The *Contractor* and/or appropriate *Subcontractors, Sub-Subcontractors* and *Suppliers* who install *Products* shall be responsible for deductible amounts under the policies except where such amounts may



be excluded from the *Contractor's* responsibility by terms of GC 9.1 – PROTECTION OF WORK AND PROPERTY and GC 9.2 – DAMAGES AND MUTUAL RESPONSIBILITY.

- 11.1.5 Any variation in the insurances required as approved by the *Owner* and the *Owner's* insurance consultant will be valued and processed as a *Change Order* in accordance with the *Change Order* procedure pursuant to GC 6.2 – CHANGE ORDER.

## **GC 11.2 BONDS**

- 11.2.1 The *Contractor* shall, prior to commencement of the *Work*, provide to the *Owner* both a performance bond and a labour and material payment bond in respect of all *Work* being performed by the *Contractor* up to a maximum amount of \$[REDACTED] (Low Penalty Bond) for the first 12 months of construction only and for the balance of the construction, the performance bond and the labour and material payment bond will reduce in value and coverage to \$[REDACTED] with coverage limited to the general conditions *Work* of the *Contractor* (per endorsement to bonds). *Project Co*, the *Lender* and *Hospital* shall be Obligees under the bonds.
- 11.2.2 Such bonds shall be issued by a duly licensed surety company authorized to transact a business of suretyship in the Province of Ontario and shall be maintained in good standing until the fulfilment of the *Contract*.
- 11.2.3 For greater certainty the obligations of the surety under such bonds shall not extend to or include any obligations relating to the Financing or Cost of the financing.
- 11.2.4 The *Contractor* will obtain and maintain a *Project* specific policy of insurance covering [REDACTED]% of all *Work* being sub-contracted by the *Contractor* with a cumulative maximum limit of not less than \$[REDACTED] and a single claim limit of not less than \$[REDACTED]. The insurance will be provided by Zurich Insurance and there will be an assignment of interest to the *Lenders* and to the *Hospital* all as more particularly provided in the *Lender's Direct Agreement*.

## **PART 12 INDEMNIFICATION — WAIVER — WARRANTY**

### **GC 12.1 INDEMNIFICATION**

- 12.1.1 In addition to any other indemnification provided in the *Contract* or in law, the *Contractor* shall indemnify and hold harmless the *Owner*, the *Consultant*, the *Owner's Project Manager* and Ontario Infrastructure Projects Corporation and each of their respective directors, officers, consultants, agents and employees and each of their respective successors and assigns as well as her Majesty the Queen in right of Ontario, her ministers, agents and employees or any person for whom they are in law responsible (the "Indemnified Persons"), from and against claims, demands, losses, costs, expenses (including reasonable legal fees on a full indemnity basis), damages, actions, fines or penalties, suits or proceedings (hereinafter called "*Claims*"), by third parties arising during the course of the *Work* provided such claims are:
- .1 attributable to all personal or bodily injury, sickness, disease, or death, or to injury to or destruction of tangible or intangible property; and
  - .2 caused by (i) negligent or intentional acts or omissions of the *Contractor* or *Sub-contractors* or anyone for whom acts the *Contractor* or *Sub-contractors* may be liable or (ii) breach of the *Contract*; and
  - .3 made in writing within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work*, or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Work*.

- 12.1.2 The *Owner* hereby holds, in trust for and on behalf of any indemnified person, other than the *Owner*, having the benefit of an indemnity from the *Contractor* under the *Contract*, the benefit of such indemnification of the *Contractor*. The *Contractor* hereby holds in trust for and on behalf of *Project Co*, the *Lender* and the *Lender's Consultant*, having the benefit of an indemnity from the *Owner* under the *Contract*, the benefit of such indemnification of the *Owner*.
- 12.1.3 [INTENTIONALLY DELETED]
- 12.1.4 For greater certainty the liability of the *Contractor* under this GC 12.1.1 shall not be greater than the total cumulative liability of the *Contractor* under GC 12.2.3.
- 12.1.5 This GC 12.1 shall govern over the provisions of GC 1.3.1 of GC 1.3 – RIGHTS AND REMEDIES or GC 9.2 – DAMAGES AND MUTUAL RESPONSIBILITY.

## **GC 12.2 WAIVER OF CLAIMS**

### 12.2.1 Waiver of Claims by the *Owner*

As of the date of the final certificate for payment, the *Owner* expressly waives and releases the *Contractor* from all claims against the *Contractor* including without limitation those that might arise from the wilful misconduct, negligence or breach of contract by the *Contractor* except one or more of the following:

- .1 those made in writing prior to the date of the final certificate for payment and still unsettled;
- .2 those arising from the provisions of any indemnity given by the *Contractor* under the *Contract* or arising under GC 12.3 – WARRANTY;
- .3 those arising from the *Contractor's* obligations and indemnity under GC 9.3 –HAZARDOUS MATERIALS; and
- .4 those made in writing within a period of 6 years from the *Substantial Performance Date* or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Work* arising from any liability of the *Contractor* for damages resulting from substantial defects or deficiencies in or from the *Contractor's* performance of the *Contract*. As used herein “substantial defects or deficiencies” means those defects or deficiencies in the *Work* which affect the *Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents*.

### 12.2.2 Waiver of Claims by the *Contractor*

As of the date of the final certificate for payment, the *Contractor* expressly waives and releases the *Owner* from all claims against the *Owner* including without limitation those that might arise from the negligence or breach of contract by the *Owner* except:

- .1 those made in writing prior to the *Contractor's* application for final payment and still unsettled;
- .2 those arising from the provisions of any indemnity given by the *Owner* under the *Contract*; and
- .3 those arising from the *Owner's* obligations and indemnity under GC 9.3 –HAZARDOUS MATERIALS or GC 10.3 – PATENT FEES.

- 12.2.3 Subject to and save and except in respect to any claims of the *Owner* (i) for the cost to perform and complete the *Work* in accordance with the *Contract Documents*; (ii) for the costs that may arise in the circumstances of GC 7.1.1 or to rectify the breach of covenant of the *Contractor* under GC 12.3.2 or GC 12.3.3 to correct defects, deficiencies or non-compliant items in the *Work*; (iii) those arising from the

*Contractor's* obligations and indemnity under GC 9.3 – HAZARDOUS MATERIALS; (iv) to recover from the *Contractor* damages for fraud, material misrepresentation, wilful misconduct or deliberate acts of wrong doing, or the recovery of any insurance proceeds where such funds have been misapplied by the *Contractor* or which, under the terms of this *Contract* should have been paid to the *Owner*; and (v) to recover from the *Contractor* payment of any amount that would have been payable to the *Owner* under policies of insurance under GC 11.1 – INSURANCE but for the breach of the *Contractor* under any such policies which breach relieved the insurer of its obligation to pay the *Owner* under such policies, but notwithstanding any other provision of the *Contract*, the total cumulative liability of the *Contractor* to the *Owner* for all costs, damages or losses of any kind, in law or in equity, whether based on tort, negligence, contract, warranty, strict liability or otherwise arising from or relating to the *Contract* (including, for clarity, in respect to a *Contractor Delay* or under any indemnity provided by the *Contractor* under the *Contract*) shall not be greater than \$[REDACTED]; provided that the *Contractor* shall have no liability to the *Owner* arising from or relating to the *Contract* for (i) punitive, exemplary or aggravated damages, or (ii) consequential loss or indirect loss of any nature but excluding any loss of income to and loss of use. The limitation of liability provided for in this GC 12.2.3 shall not limit amounts otherwise recoverable by the *Owner* under policies of insurance under GC 11.1 – INSURANCE or under the performance bond and labour and material payment bond or the subcontract insurance policy referred to in GC 11.2 – BONDS.

12.2.4 [INTENTIONALLY DELETED].

12.2.5 This GC 12.2 shall govern over the provisions of GC 1.3.1 of GC 1.3 – RIGHTS AND REMEDIES or GC 9.2 – DAMAGES AND MUTUAL RESPONSIBILITY.

12.2.6 The *Contractor* acknowledges that the aggregate liability of the *Consultant* in all claims arising under or in respect of this *Contract* shall be limited to the amount of the errors and omissions insurance coverage available to the *Consultant*. The *Owner* covenants with the *Contractor* to cause insurance to be in place covering *Consultant* errors and omissions with indemnity limits of not less than \$[REDACTED] available to respond to such claims. The *Contractor* shall not seek to recover from the *Consultant* or from any other person that might seek indemnity or contribution from the *Consultant* any amount in excess of the amount of the available indemnity under any errors and omissions insurance coverage available to the *Consultant* and responsive to such claim. The *Contractor* acknowledges that the *Consultant* is a third party beneficiary under this GC 12.2.5 and that *Consultant* shall be entitled to plead this GC 12.2.5 in its defence to any action brought by the *Contractor* and the *Contractor* waives any defence to such pleading by the *Consultant*. The *Contractor* further acknowledges that the *Owner* is contracting in this respect as agent for the *Consultant*.

### GC 12.3 WARRANTY

12.3.1 The *Contractor* warrants that the *Work*, including all *Products*, shall conform to the specifications set out in the *Contract Documents* in all respects and shall be new, of good quality material, of merchantable quality and fit for their intended purpose, as described in the *Contract Documents*, and free of defects in materials, equipment and workmanship for a period of one (1) year from, as the case may be, (i) the relevant *Phased Occupancy Date* in respect to a phase of the *Work* intended to be occupied by the *Owner* prior to *Substantial Performance of the Work*, but only in respect to the portions of the *Work* directly affected by the occupancy of the *Owner* of such phase of the *Work*; (ii) the *Interim Completion Date* in respect to the *Interim Work* and (iii) in respect to the balance of the *Work*, from the *Substantial Performance Date* and the *Contractor* shall extend the warranty on replaced parts and workmanship replaced during the initial warranty period to the later of (i) six (6) months from the date of acceptance of the replacement parts and/or workmanship by the *Owner*, acting reasonably, or (ii) the expiry date of the initial warranty period. This warranty shall cover labour and material, including, without limitation, the costs of removal and replacement of covering materials. This warranty shall not limit extended warranties on any items of equipment or material called for elsewhere in the specifications or otherwise provided by any manufacturer of such equipment or material. The *Contractor* shall ensure that all extended warranties specified in the *Contract Documents* are provided and shall assign to the *Owner* all such extended warranties in accordance with the provisions of GC 5.5.8.

- 12.3.2 The *Contractor* agrees to correct promptly, at its own expense, in a manner approved by the *Owner*, defects, deficiencies or non-compliant items in the *Work* which appear prior to and during the warranty periods set out in GC 12.3.1. The *Contractor* acknowledges that the timely performance of warranty work is critical to the ability of the *Owner* to maintain effective hospital operations. The *Contractor* shall use its commercially reasonable efforts to respond to the requirement of the *Owner* to correct defective, deficient or non-compliant items in the *Work* within the time periods required by the *Owner* which, for example, in relation to critical clinical areas can require immediate correction (e.g. isolation room air handling or a roof leak which makes a clinical care area unavailable). The *Contractor* further acknowledges that if the *Owner* is unable to contact the *Contractor* and/or obtain the corrective work within such time period required by the *Owner* that the *Owner's* own forces may take such emergency steps as are reasonable and appropriate to correct such defects, deficiencies or non-compliant items in the *Work* and except in the case of damage caused by the *Owner's* own forces such emergency steps taken by the *Owner's* own forces shall not invalidate any warranties in respect to such portion of the *Work* effected by such corrective actions of the *Owner's* own forces.
- 12.3.3 Subject to GC 12.3.2 the *Contractor* shall promptly, and in any event not more than thirty (30) days after receipt of written notice thereof from the *Consultant* or the *Owner*, *Make Good* any defects, deficiencies or non-compliant items in the *Work* which may develop within periods for which said materials, equipment, *Products* and workmanship are warranted, and also *Make Good* any damage to other *Work* caused by the repairing of such defects, deficiencies or non-compliant items. All of such *Work* shall be at the *Contractor's* expense. None of such *Work* shall be the basis of a claim for additional compensation or damages. The above-noted time period of thirty (30) days shall be subject to the following:
- .1 If the corrective *Work* cannot be completed in the thirty (30) days specified, the *Contractor* shall be in compliance if the *Contractor*:
    - .1 commences and is diligently proceeding with the correction of the *Work* within the specified time,
    - .2 provides the *Owner* with a schedule acceptable to the *Owner* for such correction, and
    - .3 corrects the *Work* in accordance with such schedule.
  - .2 If the *Contractor* fails to correct the *Work* in the time specified or subsequently agreed upon, without prejudice to any other right or remedy the *Owner* may have, the *Owner* may correct such *Work* and deduct the cost and expense thereof from any holdback amount held by the *Owner* or from any payment then or thereafter due the *Contractor* provided the *Consultant* has certified such cost to the *Owner*.
- 12.3.4 The performance of replacement work and *Making Good* of defects, deficiencies or non-compliant items for which the *Contractor* is responsible, shall be commenced and completed as expeditiously as possible, and shall be executed at times convenient to the *Owner* and this may require work outside normal working hours at the *Contractor's* expense. Any extraordinary measures required to complete the *Work*, as directed by the *Owner* to accommodate the operation of the Hospital or other aspects of the Project as constructed shall be at the *Contractor's* expense.
- 12.3.5 The *Contractor* shall, at any time or times prior to the expiry of said warranty period and when required to do so by the *Owner*, make such openings, tests, inspections, excavations, examinations, or other investigations in, through, of or in the vicinity of the *Work* as directed and shall, if required, *Make Good* again, to the satisfaction of the *Owner*, any openings, excavations or disturbances of any property, real or personal, resulting therefrom. If any defect, deficiency or non-compliant item for which the *Contractor* is responsible is found in the *Work* by such investigations, the cost of such investigations and such *Making Good* shall be borne by the *Contractor*; but if no such imperfect *Work* is found by such investigations, the said cost shall be borne by the *Owner*.

- 12.3.6 The foregoing express warranties shall not, subject to the waiver by the *Owner* set out in GC 12.2.1, deprive the *Owner* of any action, right or remedy otherwise available to the *Owner* at law or in equity for breach of any of the provisions of the *Contract Documents* by the *Contractor*, and the periods referred to in this GC 12.3 – WARRANTY shall not, subject to the waiver by the *Owner* set out in GC 12.2.1, be construed as a limitation on the time in which the *Owner* may pursue such other action, right or remedy.
- 12.3.7 For the purposes of this GC 12.3, completion for a milestone other than completion of the *Interim Work* or *Substantial Performance of the Work* is signified by occupation by the *Owner* of the relevant space as more particularly described in the specifications set out in the *Contract Documents*.
- 12.3.8 Subject to GC 3.2.6, neither the performance of work by the *Owner's* own forces or the work of the *Owner's* other contractors shall, except in respect to any damage caused by the *Owner's* own forces or the *Owner's* other contractors, limit the availability or terms of any warranty.

**PART 13 OTHER PROVISIONS**

13.1.1 [INTENTIONALLY DELETED].

**GC 13.2 KEY PERSONNEL**

- 13.2.1 The *Contractor* and its *Subcontractors* shall commit as many people and man-hours to the *Work* as are needed, from time to time, to meet its obligations under the *Contract* including the supervisors, project manager and other field management personnel identified in the *Contract Documents* (the “*Key Personnel*”).
- 13.2.2 The *Contractor* acknowledges that the *Owner*, in awarding the *Contract*, has relied on the *Contractor's* representations that the *Key Personnel* identified in the *Contractor's* response to the *Request for Proposal* will be available to perform their part of the *Work* throughout the duration of the *Contract* as provided for in GC 3.7.1. *Key Personnel* will be dedicated to the *Project* on a full-time basis unless noted otherwise. The *Contractor* agrees not to undertake other contracts or projects which could adversely affect or be in conflict with its performance of the *Contract*.
- 13.2.3 The *Contractor* represents that the following persons are the *Key Personnel*:

<u>Name</u>	<u>Position</u>
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

13.2.4 The *Contractor* shall not replace any of the *Key Personnel* identified in the *Contract Documents* without the prior written approval of the *Owner*. If any of the *Key Personnel* become unavailable to perform services in connection with the *Contract* due to revisions to the *Construction Schedule* or ill health or death or discharge by the *Contractor*, then the *Contractor* shall promptly designate a replacement(s) who shall be subject to the *Owner's* written approval. The *Owner* shall be entitled to complete information on any such replacement of the *Key Personnel*, including a current resume. Further, the *Owner* shall have the right, acting reasonably, to require the *Contractor* to replace any of the *Key Personnel*.

### **GC 13.3 COMMISSIONING**

- 13.3.1 The *Contractor* acknowledges that *Commissioning* of the Work as required under the *Contract Documents* is an integral and important part of the *Work* and undertakes to provide the *Owner* with any assistance deemed necessary by the *Owner*, the *Consultant* and the *Commissioning Agent*, if any is appointed by the *Owner*, in respect of the *Commissioning* for the *Project* including ensuring that the *Subcontractors* provide whatever assistance the *Owner*, the *Consultant* and the *Commissioning Agent* may reasonably require. The *Contractor* shall be responsible for including in the *Construction Schedule* the schedule for all *Commissioning*. A portion of the *Commissioning* may, as set out in the specifications in the *Contract Documents*, be completed prior to the *Completion of the Interim Work* or prior to the *Substantial Performance of the Work* and completion of *Commissioning* shall be required prior to *Total Completion* except to the extent expressly provided in the *Contract Documents* to occur following *Total Completion*.
- 13.3.2 The *Owner*, the *Consultant* and the *Commissioning Agent* will attend in accordance with the schedule for *Commissioning* set out in the *Construction Schedule* for performance tests and demonstrations carried out by the *Contractor*, the *Subcontractors*, the *Suppliers*, manufacturers, and other agents in accordance with the *Contract Documents* and as is mutually satisfactory to both parties.
- 13.3.3 The *Contractor* and the *Subcontractors* will submit copies of all as-built records, manufacturer's written performance equipment data and specification sheets and shop drawings to the *Owner* and the *Consultant* and as the *Owner* and the *Consultant* may reasonably request, and cooperate, and make reasonable efforts to ensure systems designated for *Commissioning* are complete and pre-tested as fully operational prior to scheduling tests and demonstrations with the *Owner*, the *Consultant* and the *Commissioning Agent*.

### **GC 13.4 SITE BACKGROUND REPORTS**

- 13.4.1 The *Contractor* acknowledges it has been provided the following *Site Background Reports* and has reviewed and is familiar with the *Site Background Reports*:
- .1 "Geotechnical Investigation Proposed Additions - Trillium Health Centre - 100 Queensway West - Mississauga, Ontario", prepared by Trow Consulting Engineers Ltd., July 2, 2001.
  - .2 Foundation survey prepared by Marshall Macklin Monaghan Ontario Limited and dated August 18, 19, 2004.

### **GC 13.5 ASSIGNABLE SUBCONTRACT AGREEMENT**

- 13.5.1 The following is a form of the *Assignable Subcontract Agreement* referred to in GC 3.8.4:

ASSIGNABLE SUBCONTRACT AGREEMENT

THIS AGREEMENT made as of the • day of • , 200• , between

•

(hereinafter called "*Contractor*")

OF THE FIRST PART,

- and -

---

(hereinafter called the "*Subcontractor*")

OF THE SECOND PART,

- and -

•

(hereinafter called the “*Owner*”)

OF THE THIRD PART.

WHEREAS pursuant to a construction contract dated as of the • day of •, 200• between the *Contractor* and the *Owner* (together with all amendments thereof which may hereafter be made in accordance with the terms thereof, the “Construction Contract”), *Contractor* has agreed to construct the Project as defined in the Construction Contract;

AND WHEREAS the *Contractor* and the Subcontractor entered into a subcontract dated the \_\_\_\_ day of \_\_\_\_\_, 200• (such subcontract together with all amendments thereof which may hereafter be made in accordance with the terms thereof, the “Subcontract”);

AND WHEREAS under the Construction Contract, the *Contractor* has agreed that the *Owner* may, at its option (exercisable by notice as hereinafter described) cause the *Contractor* to assign to the *Owner* or others as hereinafter identified, all right, title and interest of the *Contractor* in and to the Subcontract (the “Assignment”);

NOW THEREFORE, in consideration of the premises and the covenants herein contained, and the sum of \$2.00, the receipt and sufficiency of which is hereby acknowledged by each of the parties, the parties agree as follows:

1. Unless and until notification is given to the Subcontractor in accordance with any of the notices referred to in 2(d), (e), or (f) below, the *Contractor* shall be entitled to enforce all of the benefits and powers under the Subcontract and to deal with, and be obligated to, the Subcontractor in respect of the Subcontract and matters arising therefrom in the same manner and to the same extent as if the *Contractor* had not agreed in the Construction Contract to the Assignment.
2. The Subcontractor hereby:
  - (a) acknowledges and consents to any Assignment that may occur pursuant to this Agreement and confirms that any such Assignment that may occur pursuant to this Agreement is permitted pursuant to the provisions of the Subcontract;
  - (b) agrees to give the *Owner* prompt written notice of any default by the *Contractor* under the Subcontract, provided, however, in the event that the *Owner* exercises the option in accordance with this Agreement and effects the Assignment within five (5) *Working Days* of receipt by the *Owner* of the notice, the Subcontractor shall not be entitled to exercise any right to terminate the Subcontract that the Subcontractor may have under the Subcontract arising from or in relation to any event taking place prior to such Assignment;
  - (c) agrees that, immediately upon receipt of written notice (the “Assignment Notice”) from the *Owner* that the Subcontract is being assigned to the *Owner*, the *Lender*, the *Hospital*, the *Lender’s* or the *Hospital’s* nominee (in any event, such party identified in such written notice being the “Assignee”) the Assignee shall have all of the right, title, benefit and interest of *Contractor* pursuant to the Subcontract, without the Subcontractor’s consent and without the payment of any penalty or other amount, and the Subcontractor shall deal with the Assignee as if it had been originally named in place of *Contractor* in the Subcontract;
  - (d) agrees that the Assignee may, at any time after the giving of the Assignment Notice in subsection 2(c) above, give written notice (the “Successive Assignment Notice”) to the Subcontractor of a further assignment of the Subcontract to a new general contractor of the Project (the “GC Assignee”), and that

immediately upon receipt of the Successive Assignment Notice, the GC Assignee shall have all of the right, title, benefit and interest of the *Contractor* pursuant to the Subcontract without the Subcontractor's consent and without the payment of any penalty or other amount and the Subcontractor shall deal with the GC Assignee as if it had been originally named in place of the *Contractor* in the Subcontract; and

- (e) agrees that, notwithstanding subsections 2(c) and 2(d) herein contained, the *Owner* may give written notice (the "Direct Assignment Notice") to the Subcontractor of the assignment of the Subcontract directly to the GC Assignee, and that immediately upon receipt of the Direct Assignment Notice, the GC Assignee shall have all of the right, title, benefit and interest of the *Contractor* pursuant to the Subcontract without the Subcontractor's consent and without the payment of any penalty or other amount and the Subcontractor shall deal with the GC Assignee as if it had been originally named in place of the *Contractor* in the Subcontract.
3. Nothing herein contained shall render the *Owner*, the Hospital, or a lender or lenders to the *Owner* liable to any person for the fulfilment or non-fulfilment of the obligations, covenants and agreements, including, but not limited to the payment of any money thereunder or in respect thereto, of *Contractor* under the Subcontract, unless and until the *Owner* has given the Assignment Notice to the Subcontractor, the giving of which Assignment Notice the Subcontractor acknowledges is in the sole and unfettered discretion of the *Owner*, provided however, the Assignee shall only be liable for the obligations, covenants and agreements of *Contractor* under the Subcontract arising from and after the date of Assignment, and provided that from and after the date of the Successive Assignment Notice to the Subcontractor, the Assignee shall have no liability whatsoever to the Subcontractor for any default or for any damages arising in respect of a matter or matters occurring under such Subcontract from and after that date, and that in any event if the *Owner* gives the Direct Assignment Notice, the *Owner*, the Hospital or the *Lender* shall have no liability whatsoever to the Subcontractor for any default or for any damages arising in respect to a matter or matters occurring under the Subcontract at any time.
  4. The Subcontractor acknowledges and agrees that all of the right, title and interest of the *Contractor* in the Subcontract and all of the benefits and privileges of the *Owner* pursuant to the Assignment and this Agreement have been, or may be, without the consent of the Subcontractor or the payment of any penalty or other amount, assigned by the *Owner* to the Lender as security for obligations of the *Owner* to the Lender and that the Lender may, upon written notification being given to the Subcontractor by the Lender that the Lender is entitled to do so, exercise all of such rights of the *Owner* and the *Contractor* to the same extent as if the Lender had been a party to this Agreement in the place and stead of the *Owner*.
  5. The Subcontractor further acknowledges and agrees that all of the right, title and interest of the *Contractor* in the Subcontract and all of the benefits and privileges of the *Owner* pursuant to the Assignment and this Agreement have been, or may be, without the consent of the *Subcontractor* or the payment of any penalty or other amount, assigned by the *Owner*, subject to the prior security interest of the Lender, to the Hospital and that the Hospital may, upon written notification being given to the Subcontractor by the Hospital that the Hospital is entitled, as between itself and the Lender, to do so, exercise all of such rights of the *Owner* and the *Contractor* to the same extent as if the Hospital had been a party to this Agreement in the place and stead of the Lender.
  6. Any notice, request or demand required or permitted to be given hereunder shall be in writing and shall be served personally, sent by prepaid registered mail or by confirmed facsimile transmission addressed as follows:
    - (a) in the case of *Contractor*:
      - 
      - Attention: •
      - Facsimile No. •
    - (b) in the case of the *Owner*:



•

Attention: •  
Facsimile No. •

with a copy to:

Infrastructure Ontario  
•

Attention: •  
Facsimile No. •

- (c) in the case of *Lender*:  
[BANK]

, Ontario

Attention:  
Facsimile No. ( )

- (d) in the case of the Subcontractor:

Attention:  
Facsimile No. ( )

Any party may from time to time change its address and recipient for service by notice to the other party or parties given in the manner aforesaid.

Notices which are served in the manner aforesaid shall be deemed sufficiently served for all purposes of this Agreement, in the case of those personally served or transmitted by facsimile transmission, on the date of such service or transmission, provided same is a Business Day (as hereinafter defined), and if not on the next following Business Day, and in the case of those given by registered mail, on five (5) Business Days following the mailing thereof. Provided that in the event normal mail service is interrupted by strikes, slow-down or other cause, then the party sending the notice shall utilise any similar service which has not been so interrupted in order to ensure the prompt receipt of the notice, request or demand by the other party or parties, and for the purpose of this Section such service shall be deemed to be personal service or facsimile transmission. Business Day shall mean a day which is not: (i) a Saturday or Sunday, or (ii) a day observed as a holiday under the laws of the Province of Ontario or the federal laws of Canada applicable in the Province of Ontario.

7. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
8. This Agreement shall be conclusively deemed to be a contract made under and shall for all purposes be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
9. The Subcontractor shall from time to time and at all times hereafter, upon the reasonable written request of the *Owner* so to do, make, do, execute and deliver or cause to be made, done, executed and delivered all such

further acts, deeds, assurances and things as may be desirable in the opinion of the *Owner*, acting reasonably, for more effectually implementing and carrying out the true intent and meaning of this Agreement.

10. This Agreement may be executed by the parties in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles shall together constitute one and the same agreement.

IN WITNESS WHEREOF the parties have executed this Agreement by affixing their corporate seals under the hands of their proper signing officers duly authorized in that behalf.

[CONTRACTOR]

By:

Name: c/s

Title:

[SUBCONTRACTOR]

By:

Name: c/s

Title:

[•]

By:

Name: c/s

Title:

## **GC 13.6 RISK ASSESSMENT GUIDELINES**

- 13.6.1 The following chart illustrates the expected treatment of a number of possible changes in the *Work*:

<b><u>RISK ASSESSMENT GUIDELINE:</u></b>		<b>A = Contractor's Design Contingency (CDC)</b> <b>B = Unforeseen (Owner's cost)</b> <b>C = Scope Change (Owner's cost)</b> <b>D = Core design functionality (Owner's cost)</b>			
		<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
1.	At SPD level, add five (5) fire dampers. Fire rated partition shown on drawings.	√			
2.	2 hour fire separation required for stairwell. One wall does not show proper Fire Resistance Rating (rated door, hardware, fire damper also required).	√			
3.	Add starter for fan located on roof.	√			
4.	Cost for preparation of interference drawings.	√			
5.	Structural design insufficient to accommodate loading requirements of the specified equipment in penthouse.				√
6.	Provide seven (7) lab sinks complete with taps, wastes and fittings.			√	
7.	Furred out space in existing construction not sufficient for ducts shown, existing conditions did not conform to the Consultant's assumptions.		√		
8.	Final equipment selection requires modifications to services/space outside the tolerances specified.			√	
9.	Reinforcing to install wall mounted equipment not shown, but is required by manufacturer.	√			
10.	Replace 20' of underground broken drainage pipe.		√		
11.	As per industry standards, maintain or reroute existing services running through existing spaces	√			
12.	Testing and removal of abandoned fire alarm system in existing facility, not identified or readily inferable on the documents.		√		
13.	Existing duct riser is removed and resulting opening needs to be firestopped.	√			
14.	Existing duct to remain in existing building, firestopping around floor opening to be upgraded to meet code requirements.		√		
15.	Upgrade fire separation of existing stairwell: building inspector rules that existing conditions do not meet code with extensive renovations proposed.		√		

<b><u>RISK ASSESSMENT GUIDELINE:</u></b>		<b>A = Contractor's Design Contingency (CDC) B = Unforeseen (Owner's cost) C = Scope Change (Owner's cost) D = Core design functionality (Owner's cost)</b>			
		<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
16.	Emergency voice communications speakers volume meets specification, but not sufficient when tested by building inspector. Relocation or additional speakers required.		√		
17.	Sprinkler layout does not comply with code requirements. (note: Subcontractor provides sprinkler layout).	√			
18.	Re: exit requirements, Building inspector rules that travel distance is exceeded (different method of measuring) Additional measures to be implemented.		√		
19.	Building inspector and Fire Marshall have different interpretations of whether standpipe enclosure to be fire rated. Additional cost incurred.		√		
20.	Bulkhead impedes visibility of exit sign. Modifications to exit sign placement required.	√			
21.	Headroom does not meet Ontario Building Code or design requirements due to lack of design coordination and Subcontractor coordination.	√			
22.	Headroom does not meet Ontario Building Code or design requirements due to initial design fundamentally unable to meet headroom requirements.				√
23.	Barrier free washrooms do not achieve turning radius due to contractor-initiated change to toilet size.	√			
24.	Barrier free washrooms do not achieve turning radius due to design/construction coordination issues.	√			
25.	Barrier free washrooms do not achieve turning radius due to initial design fundamentally unable to provide required turning radius.				√
26.	*Compliance with CSA Z32-04 electrical receptacles in patient care areas not achieved because regular receptacles specified.				√
27.	*Testing for compliance with CSA Z32-04 electrical receptacles in patient care areas not achieved because they are not properly grounded.	√			
28.	Providing additional electrical connections (not on the drawings) to supply fans (on the drawings) required	√			√

<b><u>RISK ASSESSMENT GUIDELINE:</u></b>		<b>A = Contractor's Design Contingency (CDC) B = Unforeseen (Owner's cost) C = Scope Change (Owner's cost) D = Core design functionality (Owner's cost)</b>			
		<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
	additional capacity in the electrical panel.  a. <u>Electrical connections</u> : CDC  b. <u>Capacity of panel</u> : Owner				
29.	Interference drawings and on-site conditions require additional lengths of ductwork/insulation.	√			
30.	Floor layout requires a total of 20,000 cfm air supply but unit is sized at 10,000 cfm.				√
31.	Drains required for refrigerator/freezers shown on equipment schedule but not on drawings. Requires larger main drain.  a. <u>Drains</u> : CDC  b. <u>Main drain size increase</u> : Owner	√			√
32.	New structural openings required (not shown on drawings) in existing or new construction due to new duct risers (shown on drawings.).	√			
33.	Infilling of existing structural openings found after demolition (not on existing documentation nor properly inferable from such existing documentation)		√		
34.	Shower specified would not fit through door in existing facility.				√
35.	Shower specified would not fit through door in new facility. ( <i>Contractor</i> can install prior to installing door).	√			
36.	Owner's food service provider requires changes to M & E services supplying coffee shop.			√	
37.	Sump pit shown on drawings but sump pit cover missing from specification.	√			
38.	Millwork schedule for a patient room shows nothing, but plans show millwork for clothing storage in patient room.	√			
39.	Fan shown on mechanical drawing but not connected on electrical drawings. Connection of fan to closet	√			

<b><u>RISK ASSESSMENT GUIDELINE:</u></b>		<b>A = Contractor's Design Contingency (CDC)</b> <b>B = Unforeseen (Owner's cost)</b> <b>C = Scope Change (Owner's cost)</b> <b>D = Core design functionality (Owner's cost)</b>			
		<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
	Motor Control Centre.				
40.	Same as 39 but the feeder to Motor Control Centre needs to be modified to suit additional increase in Load.				√
41.	Five fire shutters shown, one additional fire shutter required on 6 <sup>th</sup> opening adjacent to other five.	√			
42.	Five fire shutters shown, one additional fire shutter required because building inspector interprets building code differently from the consultants and on which basis the building permit was received.		√		
43.	Mechanical specifications heat wheels as equipment in the <i>Project</i> , but they do not appear on the drawings so quantity and location not known.				√

- Note 1: The *Contractor* shall be responsible to meet all codes, regulations, bylaws and standards to the same extent as per industry standard on similar projects in Ontario.
- Note 2: These examples are illustrative samples of the types of *Design Issues* which may be encountered, and the findings the *Consultant* might reasonably make as to whether the issues are properly characterized as *Contractor's Design Contingency* matters. These examples are not intended to be definitive or complete.
- Note 3: It is the intent that *Subcontractors* should also be aware of the *CDC (Contractor's Design Contingency)* defined in GC 4.2.

### **GC 13.7 HOSPITAL'S PROPERTY INSURANCE**

13.7.1 The following chart is a description of the property insurance policies held by the Hospital.

	<b><u>POLICIES</u></b>	
1.	<b>PROPERTY POLICY</b>  <b>INSURERS:</b> Various, per subscription <b>POLICY NO.:</b> 107189-408 <b>TERM:</b> July 1, 2006 - July 1, 2007  <b>Property of Every Description</b> (All Risks, including Flood, Earthquake)	\$ [REDACTED]
	<b><u>Coverage Extensions</u></b> Rental Income	\$ REDACTED
	Business Interruption/Extra Expense	\$ [REDACTED]
	Valuable Papers and Records	\$ [REDACTED]
	Accounts Receivable	\$ [REDACTED]

	Patient Effects \$ [REDACTED] Fine Arts \$ [REDACTED] <b>TOTAL LIMIT</b> \$ [REDACTED]
	<b>Deductible:</b> Each Loss \$ [REDACTED] <b>Except</b> Flood/Sewer Back-up, \$ [REDACTED] Water Damage-Greater of \$[REDACTED] or \$ [REDACTED] [REDACTED]% of Insured Loss, subject to a maximum of \$[REDACTED] Earthquake Greater of [REDACTED]% of Insured Value or \$ [REDACTED]
2.	<b>BOILER AND MACHINERY POLICY</b> <b>INSURERS:</b> G-CAN Insurance Company <b>POLICY NO.:</b> CIP - BM – 4161132 <b>TERM:</b> July 1, 2006 to July 1, 2007 <b>LIMIT PER ACCIDENT:</b> \$[REDACTED] <b>COMBINED</b> Coverage on Boilers, Pressure Vessels and Machinery for a sudden and accidental breakdown as defined  <b>DEDUCTIBLE(S) :</b> \$[REDACTED] <b>REPAIR OR REPLACEMENT:</b> <b>Coverage Included</b> SUB-LIMITS: Expediting Expenses POLICY LIMIT Water Damage \$[REDACTED] Hazardous Substances \$[REDACTED] Ammonia Contamination \$[REDACTED] Professional Fees POLICY LIMIT  LOSS OF PROFITS (TURNOVER): \$[REDACTED] (PART OF COMBINED LIMIT ABOVE), 24 - HOUR WAITING PERIOD  LOSS OF PROFITS (RENTS): \$[REDACTED] (PART OF COMBINED LIMIT ABOVE), 24 - HOUR WAITING PERIOD  EXTRA EXPENSE: \$[REDACTED] (PART OF COMBINED LIMIT ABOVE), 24 - HOUR WAITING PERIOD  CONSEQUENTIAL DAMAGE: \$[REDACTED] (PART OF COMBINED LIMIT ABOVE) DEDUCTIBLE: AS ABOVE

**GC 13.8 SUBCONTRACTORS AND SUPPLIERS**

13.8.1 The following chart is a list of all *Subcontractors* and *Suppliers* that the *Contractor* proposes to engage for the *Project*.

Type of Trade	Name of SubContractor / Supplier
Civil Work – Site Work / Asphalt Paving / Excavation and Backfilling / Rock Removal	[REDACTED]
Concrete – Cast-in-place Concrete and Forming	[REDACTED]

<b>Type of Trade</b>	<b>Name of SubContractor / Supplier</b>
Interior Demolition	[REDACTED]
Asbestos Abatement	[REDACTED]
Landscaping	[REDACTED]
Masonry	[REDACTED]
Structural Steel and Steel Deck	[REDACTED]
Structural Steel Erector	[REDACTED]
Miscellaneous Metals and Stairs	[REDACTED]
Millwork	[REDACTED]
Roofing and Sheet Metal	[REDACTED]
Preformed Metal Cladding and Metal Wall Panels	[REDACTED]
Plastic Faced Wood Doors	[REDACTED]
Overhead Doors and Rolling Shutters	[REDACTED]
Aluminum Curtain Wall and Sloped Glazing	[REDACTED]
Aluminum Doors and Frames	[REDACTED]
Aluminum Clad Wood Doors	[REDACTED]
Hollow Metal Doors and Screens	[REDACTED]
Glass and Glazing	[REDACTED]
Sealants	[REDACTED]
Steel Studs, Metal Furring and Gypsum Board & Acoustic Ceilings	[REDACTED]
Resilient Flooring and Base	[REDACTED]
Ceramic Tile	[REDACTED]
Cement Finishing	[REDACTED]
Field Painting and Finishing	[REDACTED]
Elevators	[REDACTED]
Spray Fire-proofing	[REDACTED]



Type of Trade	Name of SubContractor / Supplier
Fire Stopping	[REDACTED]
Intumescent Paint	[REDACTED]
Sprinkler and Fire Protection	[REDACTED]
Generator Supplier	[REDACTED]
Mechanical Contractor	[REDACTED]
Electrical Contractor	[REDACTED]

**GC 13.9 APPENDIX 1 REGARDING INTERIM WORK**

13.9.1 The attached Appendix 1 identified as TRILLIUM HEALTH CENTRE, Preliminary Schedule Revision 9, Page number 1A, Run Date 19MAR07 sets out the preliminary schedule regarding *Interim Work*.

**APPENDIX 1**

**TRILLIUM HEALTH CENTRE, PRELIMINARY SCHEDULE REVISION 9,  
PAGE NUMBER 1A, RUN DATE 19MAR07**